

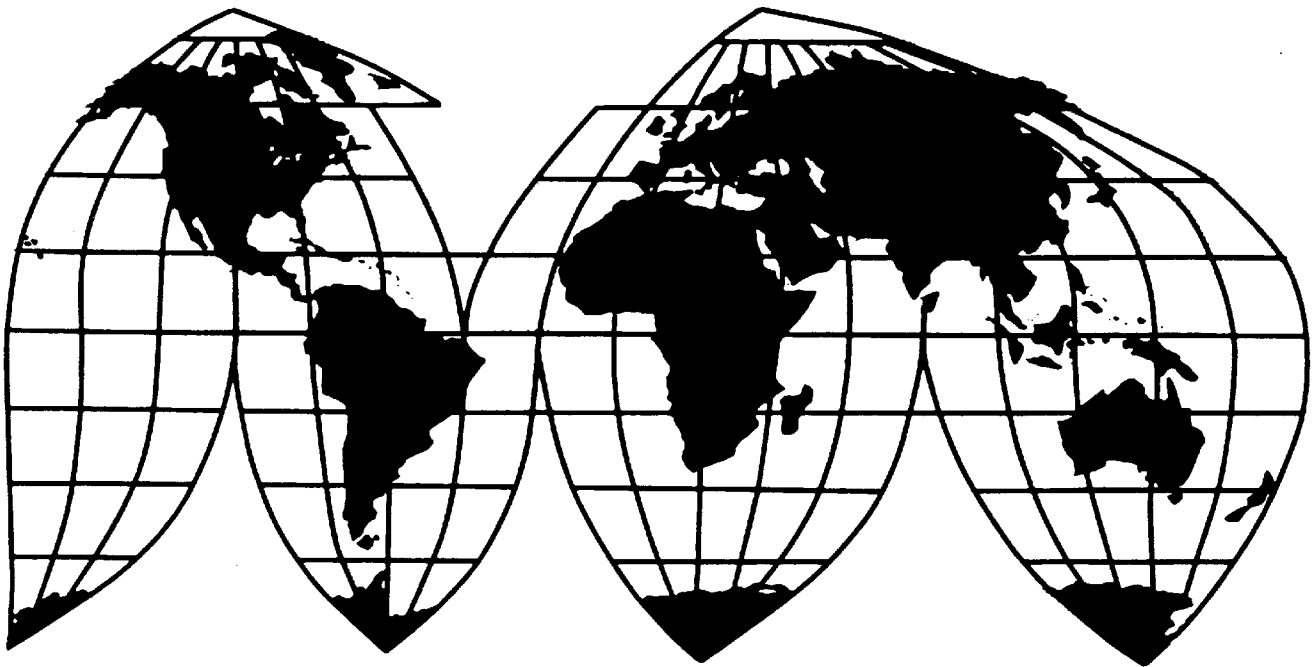
Certain Orange Juice From Brazil

Investigation No. 731-TA-1089 (Preliminary)

Publication 3757

March 2005

U.S. International Trade Commission



U.S. International Trade Commission

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Note.—Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-1089 (Preliminary)

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, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil of certain orange juice,² provided for in subheadings 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 (LTFV).³

COMMENCEMENT OF FINAL PHASE INVESTIGATION

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

BACKGROUND

On December 27, 2004, a petition was filed with the Commission and Commerce 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;⁴ and Southern Garden Citrus

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 The 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 ("NFCOJ").

³ Vice Chairman Deanna Tanner Okun, Commissioner Jennifer A. Hillman, and Commissioner Daniel R. Pearson find two domestic like products in this investigation - FCOJM and NFCOJ. They determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of FCOJM from Brazil. They also determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports of NFCOJ from Brazil.

⁴ On January 31, 2005, petitioners submitted a letter to the Commission modifying the petition to remove Peace River as a petitioner. In a letter sent to Commerce on January 27, 2005, Peace River stated that it opposes the
(continued...)

Processing Corp. (d/b/a Southern Gardens), Clewiston, FL, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of certain orange juice from Brazil. Accordingly, effective December 27, 2004, the Commission instituted antidumping duty investigation No. 731-TA-1089 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference 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 January 4, 2005 (70 FR 387, January 4, 2005). The conference was held in Washington, DC, on January 19, 2005, and all persons who requested the opportunity were permitted to appear in person or by counsel.

⁴ (...continued)

petition until resolution of the ongoing sunset review of the existing order on frozen concentrated orange juice from Brazil. It reserves its right to change its position on the petition based on the outcome of the sunset review.

IEWS OF THE COMMISSION¹

Based on the record in this preliminary phase investigation, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of certain orange juice from Brazil that are allegedly sold in the United States at less than fair value (“LTFV”).

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determinations, whether there is a reasonable indication that a domestic industry is materially injured by or threatened with material injury, or that the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.² In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”³

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”⁴ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “producers as a [w]hole 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 the product.”⁵ In turn, the Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation.”⁶

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.⁷ No single factor is dispositive, and the Commission

¹ Vice Chairman Okun, Commissioner Hillman, and Commissioner Pearson do not join this opinion. See Dissenting Views of Vice Chairman Okun, Commissioner Hillman, and Commissioner Pearson.

² 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed Cir. 1986); Ranchers-Cattlemen Action Legal Foundation v. United States, 74 F.Supp.2d 1353, 1368-69 (CIT 1999); Aristech Chemical Corp. v. United States, 20 CIT 353, 354-55 (1996).

³ American Lamb, 785 F.2d at 1001; see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

⁴ 19 U.S.C. § 1677(4)(A).

⁵ Id.

⁶ 19 U.S.C. § 1677(10).

⁷ See, e.g., NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of

(continued...)

may consider other factors it deems relevant based on the facts of a particular investigation.⁸ The Commission looks for clear dividing lines among possible like products, and disregards minor variations.⁹ Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles that Commerce has identified.¹⁰ The Commission must base its domestic like product determination on the record in the investigation before it. The Commission is not bound by prior determinations, even those pertaining to the same imported products, but may draw upon previous determinations in addressing pertinent like product issues.¹¹

B. Product Description

In its notice of initiation, Commerce defined the imported merchandise within the scope of the investigation as:

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 Not-From-Concentrate (NFC).¹²

The notice of initiation further explained that the scope with respect to FCOJM covered just five specific Brazilian firms: “the scope with regard to FCOJM covers only FCOJM produced and/or exported by those companies who were excluded or revoked from the existing antidumping order on FCOJ from Brazil as of December 27, 2004. Those companies are Cargill Citrus Limitada, Citrusuco Paulista, S.A., Frutopic S.A., Montecitrus Industria e Comercio Limitada, and Succocitrico Cutrale SA (Cutrale).” *Id.* Commerce also specifically excluded from the scope reconstituted and retail orange juice stating as follows:

⁷ (...continued)

factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes, and production employees; and, where appropriate, (6) price. *See, e.g., Nippon*, 19 CIT at 455, n.4; *Timken Co. v. United States*, 913 F. Supp. 580, 584 (Ct. Int’l. Trade 1996).

⁸ *See, e.g., S. Rep. No. 96-249*, at 90-91 (1979).

⁹ *See, e.g., Nippon*, 19 CIT at 455; *Torrington*, 747 F. Supp. at 748-49; *see also, e.g., S. Rep. No. 96-249*, at 90-91 (1979) (Congress has indicated that the domestic like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”)

¹⁰ *See, e.g., Hosiden Corp. v. Advanced Display Mfrs.*, 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find determination of six domestic like products in investigations where Commerce found five classes or kinds); *Torrington*, 747 F. Supp. at 748-52 (affirming Commission’s determination of six domestic like products in investigations where Commerce found five classes or kinds).

¹¹ *See Acciaci Speciali Terni S.p.A. v. United States*, 118 F.Supp.2d 1298, 1304-05 (Ct. Int’l Trade 2000); *Nippon Steel Corp. v. United States*, 19 CIT 450, 455 (1995); *Asociacion Colombiana de Exportadores de Flores v. United States*, 693 F.Supp. 1165, 1169 n.5 (Ct. Int’l Trade 1998) (particularly addressing like product determination); *Citrusuco Paulista, S.A. v. United States*, 704 F.Supp. 1075, 1087-88 (Ct. Int’l. Trade 1988).

¹² 70 Fed. Reg. 7233, 7234 (Feb. 11, 2005).

Excluded from the scope of this investigation are 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.¹³

C. Analysis

Petitioners advocate one domestic like product coextensive with the scope in this investigation to include both FCOJM and NFC. Respondents argue that FCOJM and NFC are two separate like products. For purposes of this preliminary determination, we find a single domestic like product coextensive with Commerce's scope.

Physical Characteristics and Uses: Both FCOJM and NFC are made almost exclusively from the same types of "round" oranges.¹⁴ Because the predominant ingredient for FCOJM and NFC is the same (*i.e.*, "round" oranges), FCOJM and NFC bear significant similarities in terms of physical characteristics.¹⁵ FCOJM is six or seven times more concentrated than NFC.¹⁶ Despite the initial difference in terms of concentration level, however, both FCOJM and NFC share the same predominant end-use: consumption as ready-to-drink orange juice.¹⁷

Common Manufacturing Facilities, Employees, and Methods: According to Petitioners, FCOJM and NFC share manufacturing processes, production lines, equipment, and employees.¹⁸ Respondents acknowledge that there are common manufacturing facilities and employees for both FCOJM and NFC.¹⁹

¹³ *Id.* at 7234.

¹⁴ Conf. Tr. at 147; CR at I-8; PR at I-6.

¹⁵ Round oranges account for approximately 80 percent of the manufacturing costs of both FCOJM and NFC during the period examined. CR/PR at V-1.

¹⁶ The differing degrees of concentration of FCOJM and NFC are reflected in the amount of sugar they contain by weight. The sugar content of a solution is measured on the Brix scale, which indicates the percentage by weight of sugar contained in a solution at a particular temperature. FCOJM typically has a Brix value of about 65 whereas NFC generally has a Brix of approximately 11. CR at I-6 to I-8; PR at I-5 to I-6.

In terms of physical characteristics, the parties disagree whether orange juice produced from NFC is superior in taste to orange juice produced from FCOJM. Respondents have alleged that NFC produces "fresh-squeezed" taste. Neither they nor Petitioners have provided any probative data concerning taste differences. *See* Conf. Tr. at 59, 138-139, and 203. The parties also disagree about whether NFC has a substantially shorter shelf-life than FCOJM. *See* Petitioners' Postconference Br. at 5; Conf. Tr. at 140. Neither side has provided data to support their view on this point as well. In any final phase investigation, we will seek to obtain information concerning these issues.

¹⁷ CR at I-9; PR at I-6 to I-7. Reportedly, FCOJM may also be used in carbonated and noncarbonated nonjuice drinks, in fruit drinks, as a beverage base, and as an ingredient in jams and jellies. CR at I-7; PR at I-5. At this preliminary phase of the investigation, there is no information in the record on how common these uses are for FCOJM. In any final phase investigation, we will seek to obtain information on this subject.

¹⁸ Petitioners' Postconference Br. at 8, 10.

¹⁹ Conf. Tr. at 157. Tropicana also concedes that some domestic producers make both FCOJM and NFC at the same facilities, although it states that this is "certainly not always the case." Tropicana Postconference Br. at 14. According to Tropicana, it primarily produces NFC whereas "some" unspecified amount of domestic producers are dedicated exclusively to FCOJM. *Id.*

Both FCOJM and NFC are produced almost exclusively from the same kinds of round oranges,²⁰ which, until the point of juice extraction are all sized, graded, washed, and stored in bins in the same manner.²¹ The equipment used to extract juice from oranges is typically the same for FCOJM and NFC.²² However, the settings for such equipment may differ insofar as FCOJM requires heavier extractor and finisher pressures than NFC.²³

Juice intended for FCOJM is sent to an evaporator where most of the water is removed by vacuum and heat to obtain a base concentration level, typically 65 Brix.²⁴ Juice made into NFC is de-oiled to .02 to .04 percent levels with a centrifuge, and then is sent to a pasteurizer where it is flash-heated.²⁵ Because it is pasteurized by flash-heating without removing any water content from the juice, NFC is always single-strength (at approximately 11.8 Brix) and never concentrated.²⁶

FCOJM is typically stored at twenty degrees Fahrenheit or lower in tank farms or 55-gallon drums until it is reconstituted and packaged for sale.²⁷ NFC is stored in a number of ways: frozen as blocks in warehouses, frozen in 55-gallon drums, pasteurized and chilled in large aseptic tanks, or pasteurized and chilled in 4' x 4' wooden boxes containing a plastic bag which holds approximately 300 gallons.²⁸

FCOJM may be reconstituted by adding water, oils, and essences, which were removed during the evaporation process.²⁹ Most FCOJM is reconstituted into single strength orange juice and packaged into ready-to-drink retail size containers.³⁰ A smaller amount of FCOJM is reconstituted into FCOJR and packaged in smaller FCOJR retail-size containers which must be kept frozen until sale.³¹ NFC is never concentrated so it need not be reconstituted with water to produce single-strength juice.³² NFC is sold in ready-to-drink retail size containers.³³

²⁰ CR at I-8; PR at I-6.

²¹ CR at I-8; PR at I-6.

²² Tropicana acknowledges that both FCOJM and NFC “are made from extracted orange juice, and the same kind of extraction equipment can be used, regardless of which product is being made.” Tropicana Postconference Br. at 14.

²³ Conf. Tr. at 139, 158.

²⁴ CR at I-9; PR at I-6 to I-7; Conf. Tr. at 58.

²⁵ CR at I-8 to I-9; PR at I-6 ; Conf. Tr. at 58, 67-68.

²⁶ CR at I-7; PR at I-5.

²⁷ CR at I-9; PR at I-7.

²⁸ CR at I-9; PR at I-6.

²⁹ CR at I-9; PR at I-7.

³⁰ CR at I-9; PR at I-7.

³¹ CR at I-9; PR at I-7.

³² CR at I-7; PR at I-5. In terms of how domestic NFC producers will process the product after it is pasteurized and before it is sold at retail, one of Petitioners’ witnesses, Mr. Charles Lucas (Vice President of Southern Gardens Citrus) testified at the conference that “[t]hey will maybe add additional oils for flavoring, or they will add calcium, or they will add pulp, depending on the different products they think their consumers are looking to purchase.” Conf. Tr. at 68.

³³ CR at I-9; PR at I-7. In any final phase investigation, issues the Commission may pursue include whether domestic processors exclusively produce FCOJM, and value added at separate manufacturing stages such as juice extraction, pasteurization for NFC, water evaporation for FCOJM, transportation, storage, packaging, and shipping.

Channels Of Distribution: Petitioners assert that both FCOJM and NFC share similar channels of distribution because they are both typically sold in bulk to remanufacturers and packagers.³⁴ Petitioners assert that four out of the top five purchasers of FCOJM and NFC are the same.³⁵ Commission information at this preliminary phase suggests that FCOJM and NFC have similar channels of distribution.³⁶ In any final phase investigation, we will seek further information about distribution channels for FCOJM and NFC.

Interchangeability: Petitioners argue that FCOJM and NFC are essentially interchangeable, as both are bulk forms of orange juice prepared for transport and for further manufacturing, and compete for the same end use. Petitioners further argue that processors can easily produce either product and that intermediate buyers can substitute either to produce the final product. Respondents counter that a contract for FCOJM cannot be fulfilled with NFC and vice-versa. Petitioners acknowledge that customers contracting to purchase FCOJM will not typically accept NFC as a substitute for delivery.³⁷ Whereas FCOJM is concentrated, NFC is never concentrated. FCOJM cannot be “unconcentrated” and converted into NFC.³⁸ Although it is technically possible to convert NFC into FCOJM, the record in this preliminary phase of the investigation suggests that this is not commercially feasible, especially because NFC carries a price premium over FCOJM.³⁹ In questionnaire responses, some domestic producers reported that FCOJM and NFC are not interchangeable because of different handling and storage costs, differing USDA and FDA standards, and because there is a futures exchange for FCOJM but not for NFC.⁴⁰

Producer and Customer Perceptions: Petitioners argue that FCOJM and NFC are largely perceived as similar products, whereas Respondents (including some domestic producers) insist that NFC is viewed as superior.⁴¹ The current record does not address perceptions held by the purchasers of FCOJM and NFC (e.g., remanufacturers, and packers). In any final phase investigation, we will seek additional information on customer perceptions through purchaser questionnaires.

Price: There is little argument that NFC is priced at a premium compared to FCOJM.⁴² In the first quarter of 2001, the price for domestically-produced NFC was priced 32 percent higher than domestically-produced FCOJM.⁴³ By the third quarter of 2004, the price for domestically-produced NFC was priced 58 percent higher than domestically-produced FCOJM.⁴⁴ It is unclear whether the price premium for NFC is driven primarily by greater storage and transportation costs for NFC⁴⁵ or because customers are willing to pay more for NFC because they perceive it is a superior product.⁴⁶

Conclusion: For purposes of this preliminary determination, we find a single domestic like product consisting of both FCOJM and NFC. FCOJM and NFC have similar physical characteristics as

³⁴ Petitioners’ Postconference Br. at 10.

³⁵ Petitioners’ Postconference Br. at Attachment 1. According to Petitioners, the top five purchasers for FCOJM are ***. They claim that the top five purchasers of NFC are ***.

³⁶ CR at I-14; PR at I-11.

³⁷ Conf. Tr. at 60-61.

³⁸ Conf. Tr. at 154.

³⁹ Conf. Tr. at 61; Citrosuco Postconference Br. at 9; Tropicana Postconference Br. at 12.

⁴⁰ CR at I-10; PR at I-7.

⁴¹ Petitioners’ Postconference Br. at 11-12; Louis Dreyfus & Cutrale Postconference Br. at 39.

⁴² Conf. Tr. at 148.

⁴³ CR/PR at Tables V-1 & V-2.

⁴⁴ CR/PR at Tables V-1 & V-2.

⁴⁵ CR at I-14; PR at I-11. Conf. Tr. at 158-159.

⁴⁶ Conf. Tr. at 158-159.

both are produced from the same types of oranges, although FCOJM is approximately six times more concentrated than NFC. Both FCOJM and NFC have the same primary end-use, insofar as they are both used to produce single-strength, ready-to-drink orange juice sold at retail. FCOJM and NFC generally use the same production facilities and production employees, although some processors produce only NFC or FCOJM. FCOJM and NFC are produced using some of the same equipment, although extractor and finisher settings for that equipment are lighter for NFC than FCOJM. The most significant difference in terms of manufacturing processes is that FCOJM goes through an evaporation process to be concentrated, whereas NFC is never concentrated and goes through a pasteurization process. Although FCOJM and NFC appear to have at least limited interchangeability, the record is unclear as to the extent to which FCOJM and NFC are perceived as separate products by producers and consumers. The current suggests that FCOJM and NFC have the same channels of distribution. NFC is priced approximately at least 35 percent higher than FCOJM.

Despite some differences between the products, we do not find a clear dividing line between FCOJM and NFC based on similarities in physical characteristics and end uses, and their apparent overlaps in manufacturing facilities, processes, employees, and channels of distribution. Consequently, for purposes of this preliminary determination, we find a single domestic like product coextensive with Commerce's scope.⁴⁷ Throughout the remainder of this opinion, we will call this domestic like product "certain orange juice." We intend to revisit the like product issue in any final phase investigation.

III. DOMESTIC INDUSTRY

The domestic industry is defined as the "producers as a [w]hole 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 the product."⁴⁸ In defining the domestic industry, the Commission's general practice has been to include in the industry all domestic production of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.⁴⁹

A. Whether the Industry Includes Orange Growers

In cases involving processed agricultural products, section 771(4)(E) of the Act authorizes the Commission to include growers of a raw agricultural input within the domestic industry producing the processed agricultural product if:

- (a) the processed agricultural product is produced from the raw product through a single continuous line of production,⁵⁰ and

⁴⁷ We have considered the arguments presented by one of the Brazilian respondents (Montecitrus) that the Commission should find organic orange juice ("OOJ") to be a separate like product from FCOJM and NFC. However, based on the limited information on the record at this preliminary phase of the investigation, and in the absence of a clear dividing line between OOJ, FCOJM, and NFC, we include OOJ in the like product definition for purposes of this preliminary determination, and invite parties to address this argument in any final phase investigation.

⁴⁸ 19 U.S.C. § 1677(4)(A).

⁴⁹ See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct. Int'l Trade 1994), aff'd, 96 F.3d 1352 (Fed. Cir. 1996).

⁵⁰ The statute provides that the processed product shall be considered to be processed from the raw product in a single, continuous line of production if:

(continued...)

(b) there is a substantial coincidence of economic interest between the growers and producers of the processed product based upon the relevant economic factors.⁵¹

In light of our domestic like product definition, the pertinent processed agricultural product is certain orange juice. The parties agree that the pertinent raw agricultural product is “round oranges.”⁵²

We find that both prongs of the statutory grower/processor provision are satisfied and therefore include growers of round oranges in the domestic industry for purposes of this preliminary determination. The first prong is satisfied because certain orange juice is produced from raw oranges through a single, continuous line of production. Round oranges are substantially or completely devoted to the production of certain orange juice. Petitioners estimate that approximately 92 percent of domestically-grown round oranges are processed into either FCOJM or NFC.⁵³ Moreover, certain orange juice is produced

⁵⁰ (...continued)

- (a) the raw agricultural product is substantially or completely devoted to the production of the processed agricultural product; and
- (b) the processed agricultural product is produced substantially or completely from the raw product.

19 U.S.C. § 1677(4)(E)(iii).

⁵¹ In addressing coincidence of economic interest under the second prong of the test, the Commission may, in its discretion, consider price, added market value, or other economic interrelationships. Further:

- (a) if price is taken into account, the Commission shall consider the degree of correlation between the price of the raw agricultural product and the price of the processed agricultural product; and
- (b) if added market value is taken into account, the Commission shall consider whether the value of the raw agricultural product constitutes a significant percentage of the value of the processed agricultural product.

19 U.S.C. § 1677(4)(E)(iii).

⁵² See Petitioners’ Postconference Br. at 18-19; Citrosuco Postconference Br. at 13-14; Hearing Tr. at 72. In our view, the parties are correct on this issue, especially because FCOJM and NFC are produced almost exclusively from “round oranges.” Moreover, in the Commission’s 1987 frozen concentrated orange juice investigation, rather than defining the raw agricultural product as “oranges,” the Commission defined the raw agricultural product as “round oranges.” Frozen Concentrated Orange Juice From Brazil, Inv. No. 731-TA-326 (Final), USITC Pub. 1970 at 11-12 (April 1987). In so doing, the Commission recognized differences between “round oranges” primarily used to make orange juice and “specialty oranges” such as temples, tangelos, tangerines, and mandarins, which are primarily eating oranges. There is no information on this preliminary record that contradicts that finding.

⁵³ The Commission has found the substantially or completely devoted standard satisfied in other investigations (including the 1987 frozen concentrated orange juice investigation) when the percentage of the raw agricultural product devoted to the production of the processed agricultural product was similar or even lower. See, e.g., Frozen and Canned Warmwater Shrimp Prawns From Brazil, China, Ecuador, India, Thailand, and Vietnam, Inv. Nos. 731-TA-1063-1068 (Final), USITC Pub. No. 3748 (January 2005) (included growers in the domestic industry where approximately 90% of raw agricultural product was devoted to the production of the processed product); Frozen Concentrated Orange Juice From Brazil, 731-TA-326 (Final), USITC Pub. No. 1970 (April 1987) (three Commissioners included growers in the domestic industry where less than 70% of the raw agricultural product (round oranges) was devoted to the production of the processed agricultural product (FCOJM)); Certain Fresh Atlantic Groundfish From Canada, Inv. No. 701-TA-257 (Final), USITC Pub. 1844 (1986) (finding that “substantially or completely devoted” standard was satisfied where 90% of the raw agricultural product was used to produce the processed agricultural product).

substantially from round oranges. Raw materials, most of which are juice oranges, comprised approximately 80 percent of the cost of goods sold of the domestic like product during the period examined.⁵⁴

We find for purposes of this preliminary determination that the second prong of the grower/processor provision is satisfied (*i.e.*, whether there is a substantial coincidence of economic interests between orange growers and domestic producers of FCOJM and NFC).⁵⁵ Oranges are typically sold through cooperatives and full and partial participation plans, which include both growers and processors.⁵⁶ Petitioners contend that many growers and processors have contractual relationships with one another and share financial risks as well, although Respondents argue such relationships have diminished over time.⁵⁷ Additionally, oranges are the primary raw material cost for FCOJM and NFC, and accounted for over 80 percent of processors' cost of goods sold during the period of investigation.⁵⁸ In any final phase investigation, we will seek additional information as to the extent of any coincidence of economic interest between growers and processors in the domestic industry.

B. Related Parties

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 19 U.S.C. § 1677(4)(B). That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers.⁵⁹ Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.⁶⁰

Petitioners argue that four firms are related parties – Citrusuco North America, Inc. (“Citrusuco N.A.”), Cutrale Citrus Juices, USA, Inc. (“Cutrale USA”), Cargill Juice North America, Inc. (“Cargill”), and Louis Dreyfus Citrus, Inc. (“Louis Dreyfus”) and that appropriate circumstances exist to exclude each

⁵⁴ CR/PR at V-1.

⁵⁵ There is also evidence in the record suggesting that orange and orange juice prices bear some degree of correlation during the period examined. *See, e.g.*, CR/PR at V-1; Conf. Tr. at 204-207; Petitioners' Postconference Br. at 22; Pet. at Exh. 10, 11; Louis Dreyfus & Cutrale Postconference Br. at 18.

⁵⁶ CR at III-3; PR at III-1; Tropicana Postconference Br. at 27-28.

⁵⁷ At the preliminary conference, counsel for Petitioners testified that while there has been a longer-term trend away from vertical integration, there have not been significant changes in the past few years. Conf. Tr. at 55-56.

⁵⁸ CR/PR at V-1

⁵⁹ 19 U.S.C. § 1677(4)(B).

⁶⁰ *Sandvik AB v. United States*, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), 111 *aff'd without opinion*, 904 F.2d 46 (Fed. Cir. 1990); *Empire Plow Co. v. United States*, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producers vis-a-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry. *See, e.g.*, *Torrington Co. v. United States*, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), *aff'd without opinion*, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. *See, e.g.*, *Melamine Institutional Dinnerware from China, Indonesia, and Taiwan*, Inv. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 (Feb. 1997) at 14 n.81.

of these four firms from the domestic industry.⁶¹ We find that these four firms are “related parties” subject to exclusion from the domestic industry under 19 U.S.C. § 1677(4)(B) because they are owned by Brazilian producers of subject merchandise and because they import subject merchandise.⁶² For the reasons discussed below, we do not find that appropriate circumstances exist to exclude any of these firms from the domestic industry for purposes of this preliminary determination.⁶³

Cargill. In 2004, Cargill accounted for *** percent of domestic production of certain orange juice.⁶⁴ Cargill’s ratio of subject imports to domestic production is *** in the most recent crop years.⁶⁵ The record does not indicate that Cargill derived a significant financial benefit from its corporate relationship with its Brazilian parent or from its subject imports. In fact, its financial results were *** the industry average during the investigation period.⁶⁶ Furthermore, Cargill ***.⁶⁷

Cutrale. In 2004, Cutrale accounted for *** percent of domestic production of certain orange juice.⁶⁸ Cutrale’s ratio of subject imports to domestic production is ***.⁶⁹ The record does not indicate that Cutrale derived a significant financial benefit from its corporate relationship with its Brazilian parent or from its subject imports.⁷⁰ Cutrale opposes the petition.⁷¹

Louis Dreyfus. In 2004, Louis Dreyfus accounted for *** percent of domestic production for certain orange juice.⁷² Its ratio of subject imports to domestic production was *** during the period of investigation.⁷³ The record does not indicate that Louis Dreyfus derived a significant financial benefit from its corporate relationship with its Brazilian parent or from its subject imports.⁷⁴ Louis Dreyfus opposes the petition.⁷⁵

Citrosuco. In 2004, Citrosuco accounted for *** percent of domestic production of certain orange juice.⁷⁶ Citrosuco’s ratio of total imports to domestic production increased from *** percent in crop year 2001/02 to *** percent in crop year 2002/03 but fell to *** percent in crop year 2003/04.⁷⁷

⁶¹ Petitioners’ Postconference Br. at 24.

⁶² CR/PR at Tables III-4 and III-11.

⁶³ Chairman Koplán dissents from this view. He finds that Citrosuco N.A. should be excluded from the domestic industry because Citrosuco’s ratio of total imports to domestic production was significant for each year of the period examined.

⁶⁴ CR/PR at Table III-5.

⁶⁵ The ratio of Cargill’s total imports of subject merchandise to its total production were *** percent in crop year 2001/02, *** percent in crop year 2002/03, and *** percent in crop year 2003/04. CR/PR at Table III-11.

⁶⁶ CR /PR at Table VI-4.

⁶⁷ CR/PR at Table III-5.

⁶⁸ CR/PR at Table III-5.

⁶⁹ The ratio of Cutrale’s total imports of subject merchandise to its total production was *** in crop year 2001/02, *** percent in crop year 2002/03, and *** percent in crop year 2003/04. CR/PR at Table III-11.

⁷⁰ CR/PR at Table VI-4.

⁷¹ CR/PR at Table III-5.

⁷² CR/PR at Table III-5.

⁷³ For Louis Dreyfus, the ratio of total imports of subject merchandise to its total production was *** percent in crop year 2001/02, *** percent in crop year 2002/03, and *** percent in crop year 2003/04. CR/PR at Table III-11.

⁷⁴ CR/PR at Table VI-4.

⁷⁵ CR/PR at Table III-5.

⁷⁶ CR/PR at Table III-5.

⁷⁷ With respect to FCOJM, Citrosuco’s ratio of domestic production to total imports was *** percent in crop year 2001/02, *** percent in crop year 2002/03, and *** percent in crop year 2003/04. With respect to NFC, Citrosuco’s
(continued...)

Citrosuco opposes the petition.⁷⁸ For purposes of this preliminary determination, we include Citrosuco in the domestic industry. However, we will continue to examine whether circumstances exist to exclude Citrosuco or any of the other related parties in any final phase investigation.

Accordingly, we find that appropriate circumstances do not exist to exclude any of the related party producers for purposes of our preliminary determination. We define the domestic industry to include all domestic producers of certain orange juice.

IV. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF THE SUBJECT IMPORTS⁷⁹

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.⁸⁰ In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁸¹ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁸² In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁸³ No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁸⁴

For the reasons discussed below, we find that there is a reasonable indication that the domestic industry producing certain orange juice is materially injured by reason of subject imports from Brazil.

A. Conditions of Competition

Several conditions of competition inform our analysis of whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports from Brazil.

⁷⁷ (...continued)

ratio of domestic production to total imports was *** percent in crop year 2001/02, *** percent in crop year 2002/03, and *** percent in crop year 2003/04. CR/PR at Table III-11.

⁷⁸ CR/PR at Table III-5.

⁷⁹ 19 U.S.C. § 1677(24)(A)(I)(I). In this investigation, subject imports accounted for more than three percent of the volume of certain orange juice imported into the United States from all sources in the most recent 12-month period for which data are available preceding the filing of the petition. As such, we find that subject imports are not negligible under 19 U.S. C. § 1677(24).

⁸⁰ 19 U.S.C. §§ 1671b(a) and 1673b(a).

⁸¹ 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B). See also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

⁸² 19 U.S.C. § 1677(7)(A).

⁸³ 19 U.S.C. § 1677(7)(C)(iii).

⁸⁴ 19 U.S.C. § 1677(7)(C)(iii).

1. Demand Conditions

The United States is the largest consumer of orange juice in the world.⁸⁵ Domestic demand for certain orange juice is primarily a function of demand for downstream products using FCOJM and NFC, predominantly retail orange juice.⁸⁶ Petitioners, Respondents, and other market participants largely reported that domestic demand decreased during the period examined.⁸⁷ The data collected by the Commission, however, indicate that apparent U.S. consumption of certain orange juice increased by 2.4 percent from crop year 2001-02 to crop year 2003-04.⁸⁸ In any final phase investigation, we will further examine why the market participants' perceptions and the apparent consumption data do not appear to conform.

2. Supply Conditions

Weather conditions (e.g., freezes, hurricanes) and other factors affecting the orange harvest may cause changes in the domestic supply of juice oranges for certain orange juice.⁸⁹ During the period examined, the Florida orange crop declined from 230 million boxes in crop year 2001/02 to 203 million boxes in crop year 2002/03 and increased to 242 million boxes in crop year 2003/04, the second largest Florida orange crop in history.⁹⁰ However, in the late summer and early fall of 2004, which is after the period covered by the data available on domestic orange production, the Florida orange groves were damaged by Hurricanes Charley, Frances, and Jeanne. Currently, it is projected that the Florida orange crop will drop in size to approximately 162 million boxes in crop year 2004/05.⁹¹

Respondents argue that Brazilian FCOJM in the U.S. market reflects imported product that is necessary for blending with the domestic product as well as meeting supply deficiencies.⁹²

Supply of certain orange juice is a function of inventories as well as crop size. During the period examined, domestic inventories increased overall.⁹³ In any final phase investigation, the Commission will

⁸⁵ CR at IV-5; PR at IV-4.

⁸⁶ CR at II-4; PR at II-3.

⁸⁷ CR at II-4; PR at II-3; Conf. Tr. at 46, 111, and 131. In questionnaire responses, only two importers reported that demand for the domestic like product was unchanged during the period examined while three processors and one importer reported that demand for NFC increased during the period examined. The main reasons reported for decreased demand were the popularity of low-carbohydrate diets such as the Atkins and South Beach diets. CR at II-4; PR at II-3.

⁸⁸ During the period examined, apparent U.S. consumption of the domestic like product initially fell from 1.42 billion gallons in crop year 2001/02 to 1.37 billion gallons in crop year 2002/03 before climbing to 1.45 billion gallons in crop year 2003/04. CR/PR at Table IV-2.

⁸⁹ There are a variety of factors that affect the orange crop yield, including the age of trees, citrus disease and pests (such as citrus canker and Mediterranean fruit fly), weather (freezes, hurricanes, droughts) and technological innovations. CR at III-4; PR at III-3.

⁹⁰ CR/PR at Table III-4.

⁹¹ CR/PR at Table III-4.

⁹² Louis Dreyfus & Cutrale Postconference Br. at 28-29; See also Conf. Tr. at 120 ("The ratio of Brazilian to domestic and other imported concentrates fluctuates dramatically. The larger the Florida crop, the smaller the amount of Brazilian. The smaller the Florida crop, the more Brazilian is required.") (Testimony of Randal Freeman, Senior Vice President, Louis Dreyfus Citrus, Inc.); Conf. Tr. at 128 (Testimony of Hugh Thompson, President, Cutrale Citrus Juices, USA, Inc.).

⁹³ CR/PR at Table III-12.

seek further information on the manner in which orange crop size and inventory levels affect price and otherwise impact the market for certain orange juice.⁹⁴

During the period examined, the domestic industry were the predominant source of supply of certain orange juice to the U.S. market. The presence of subject imports in the U.S. market increased, as explained further below. In 1987, an antidumping duty order was imposed on FCOJ from Brazil. This order remains in place. This instant investigation includes in its scope five specific Brazilian firms that are excluded or were revoked from the order currently in place. Because the scope of this investigation covers these specific Brazilian firms, nonsubject imports include some from Brazil as well as other countries.⁹⁵ Nonsubject imports, primarily from Brazil, declined on both an absolute and relative basis during the period examined. During crop year 2003/04, nonsubject imports held a smaller presence in the U.S. market than either the domestic industry or subject imports.⁹⁶

3. Other Conditions of Competition

Another condition of competition is that domestic producers sometimes blend the domestic like product with subject imports. More specifically, FCOJM subject imports are often blended with domestically produced FCOJM to standardize color, grade, and viscosity.⁹⁷ The record is unclear on the extent to which the domestic like product and subject imports complement or compete with each other in the U.S. market for certain orange juice. Petitioners claim that domestic like product and subject imports are substitutable and that blending with subject imports is unnecessary for the domestic like product to satisfy U.S. industry standards.⁹⁸ However, Respondents argue that the domestic like product and subject imports are not substitutable, claiming instead that subject imports are higher in viscosity, color, and grade and therefore are necessary for blending with the domestic like product to satisfy U.S. industry standards.⁹⁹ The Commission will seek further information about the need for and the prevalence of blending in any final phase investigation.

The futures market for FCOJ is also a condition of competition. FCOJ is traded on the New York Board of Trade (“NYBOT”), and both Petitioners and Respondents agree that prices for the domestic like

⁹⁴ The parties disagree about the significance of bumper crops during the period examined and about the significance of the 2004 Florida hurricanes. Petitioners insist that the domestic industry was made more vulnerable to injury by subject imports in the aftermath of the 2004 Florida hurricanes. See Petitioners’ Postconference Br. at 24. By contrast, Respondents argue that for most of the period examined the orange crop was above average or at near-record levels, and, that the combination of large bumper crops, declining domestic demand, and overstocked inventories resulted in lower revenues for the domestic industry. Louis Dreyfus & Cutrale Postconference Br. at 9. Respondents also insist that any injury that the domestic industry may have suffered during the period examined was ended by the 2004 Florida hurricanes. Id. at 16. According to Respondents, by causing a dramatic drop in the size of the domestic crop and inventory levels, the 2004 Florida hurricanes have resulted in higher orange juice prices and increased revenues for the domestic industry. Id.

⁹⁵ In its notice of initiation, Commerce stated that “the scope with regard to FCOJM covers only FCOJM produced and/or exported by those companies who were excluded or revoked from the existing antidumping order on FCOJ from Brazil as of December 27, 2004. Those companies are Cargill Citrus Limitada, Citrosuco Paulista, S.A., Frutopic S.A., Montecitrus Industria e Comercio Limitada, and Succocitrico Cutrale SA (Cutrale).” 70 F.R. at 7234.

⁹⁶ CR/PR at Table IV-2.

⁹⁷ CR at III-17; PR at III-13.

⁹⁸ Petitioners’ Postconference Br. at 33.

⁹⁹ Louis Dreyfus & Cutrale Postconference Br. at 3; Conf. Tr. at 57, 119, 148-150

product are driven by the FCOJ futures market prices.¹⁰⁰ However, they disagree about whether FCOJ futures prices are determined exclusively by domestic crop size and domestic inventory projections. Respondents argue that FCOJ futures prices depend exclusively upon domestic crop size and inventory projections and therefore remain unaffected by subject imports.¹⁰¹ Petitioners disagree. In any final phase investigation, the Commission will collect more information on whether prices are sensitive to overall supply or exclusively to domestic crop size and inventories.

B. Volume of Subject Imports

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”¹⁰²

The overall increase in subject import volume over the period examined, both in absolute terms and relative to production and consumption in the United States, was significant. By quantity, subject imports increased by *** pounds¹⁰³ or *** percent during the period examined.¹⁰⁴ However, the greatest increase in subject imports occurred in crop year 2002/03, when U.S. shipments were at their lowest level, and then these import volumes fell somewhat in crop year 2003/04.¹⁰⁵ Subject imports’ share of the U.S. market climbed from *** percent in crop year 2001/02 to *** percent in crop year 2002/03 before falling to *** percent in crop year ***.¹⁰⁶ Nonsubject imports, primarily from Brazil, declined over the period examined; however, subject imports still took market share away from the domestic like product. Domestic producers’ share of the U.S. market declined overall by 1.9 percentage points during the period examined.¹⁰⁷ The ratio of subject imports to domestic production increased by *** percentage points during the period examined.¹⁰⁸

¹⁰⁰ Petitioners’ Postconference Br. at 38; Louis Dreyfus & Cutrale Postconference Br. at 4.

¹⁰¹ Louis Dreyfus & Cutrale Postconference Br. at 1, 4, and 30-31.

¹⁰² 19 U.S.C. § 1677(7)(C)(i).

¹⁰³ Pounds references pounds of solids based on single-strength equivalent (SSE). In this report, quantities are also stated on the basis of SSE gallons. SSE gallons are a standard volume measurement for orange juice sold at retail-level concentration. The conversions made for purposes of gathering data for this proceeding result in 1 SSE pound of solids being approximately equal to 1 SSE gallon. Thus, FCOJM and NFCOJ quantities reflected in the data are comparable due to their being stated at single-strength equivalent values. The conversions used result in 1 SSE pound being approximately equal to 1 SSE gallon (*i.e.*, the conversion factor is pounds solids divided by 1.029 to calculate SSE gallons).

¹⁰⁴ The quantity of subject imports increased from *** pounds in crop year 2001/02 to *** pounds in crop year 2002/03, before falling to *** pounds in crop year 2003/04. By value, subject imports rose from *** in crop year 2001/02 to *** in crop year 2002/03 before falling to *** in crop year 2003-2004. CR/PR at Table IV-1.

¹⁰⁵ CR/PR at Tables IV-1.

¹⁰⁶ CR/PR at Table IV-2.

¹⁰⁷ Domestic producers’ market share fell from *** percent in crop year 2001/02 to *** percent in crop year 2003/04. Subject imports took market share away from nonsubject imports also. U.S. market share for nonsubject imports declined from *** percent in crop year 2001/02 to *** percent in crop year 2002/03 to *** percent in crop year 2003/04. CR/PR at Table IV-2.

¹⁰⁸ The ratio of subject imports to domestic production rose from *** percent in crop year 2001/02 to *** percent in crop year 2002/03, and then declined to *** percent in crop year 2003/04. CR/PR at Table IV-3. As discussed above in conditions of competition, in any final phase investigation, we will seek additional information to explain volume fluctuations for the subject imports.

We find for purposes of the preliminary phase of this investigation that subject import volume was significant during the period examined, both in absolute terms and relative to domestic production and consumption.¹⁰⁹

C. Price Effects of the Subject Imports

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of subject imports,

the Commission shall consider whether – (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.¹¹⁰

Market participants reported in their questionnaire responses that subject imports and the domestic like product are either frequently or sometimes interchangeable.¹¹¹ Market participants also reported uniformly that price is an important factor in purchasing decisions once a supplier can establish quality and delivery requirements.¹¹² Available data does not suggest significant quality distinctions between the domestic like product and subject imports, and also indicates that price is an important factor in purchasing decisions.

The pricing data in this preliminary phase of the investigation were requested for one FCOJM product and one NFC product. Approximately *** percent of the quantity of domestically produced commercial shipments of FCOJM and approximately *** percent of domestically produced commercial shipments of NFC for the period examined are covered by questionnaire responses.¹¹³ Approximately *** percent of Brazilian FCOJM subject imports and *** percent of Brazilian NFC subject imports are also covered by responses.¹¹⁴

¹⁰⁹ Domestic producers that import and export certain orange juice can reduce prices for their export shipments by applying the duty drawback credit that they receive when they pay duties on imported juice and then export domestic juice of the same kind or condition. CR at III-17; PR at III-13. Because of this duty drawback, Respondents suggest that the Commission should examine subject import market share based on U.S. import shipments in the United States, and not on imports as such, because a substantial portion of subject imports are held in inventory, and may be re-exported. See *Louis Dreyfus & Cutrale* Postconference Br. at 10-11, 25-26. The Commission has previously rejected similar arguments. In these cases, the Commission noted that the relevant statute (19 U.S.C. § 1673) required the Commission to examine the level of “imports,” and not import shipments in the U.S. market, although it may be appropriate to consider the degree to which imports are held in inventory instead of being immediately sold as a factor in assessing the significance of imports. See, e.g., *Persulfates From China*, Inv. No. 731-TA-749 (Final), USITC Pub. No. 3044 at n.53 (June 1997); *Ferrosilicon from Khazakstan and Ukraine*, Invs., Nos. 731-TA-566 & 569 (Final), USITC Pub. 2626 at 22-23 (Mar. 1993); *Ferrosilicon From Brazil and Egypt*, Invs. Nos. 731-TA-641-642 (Preliminary), USITC Pub. 2605 (Feb. 1993). Consequently, for purposes of our preliminary determination, we have focused on subject import volumes.

¹¹⁰ 19 U.S.C. § 1677(7)(C)(ii).

¹¹¹ CR/PR at Table II-1; CR at II-7 to II-9; PR at II-5 to II-6.

¹¹² CR at II-6 to II-7; PR at II-4.

¹¹³ CR at V-5; PR at V-3 to V-4.

¹¹⁴ CR /PR at V-5; PR at V-4.

The price data indicate a mixed pattern of underselling and overselling. The subject imports undersold the domestic like product in 12 out of 26 quarterly comparisons.¹¹⁵ Notably, underselling occurred in the majority of comparisons for FCOJM (product 1), the product with the most substantial subject import competition.¹¹⁶

The domestically produced FCOJM pricing product represented the largest volume of domestic sales.¹¹⁷ Its price decreased by 13.8 percent from the first quarter of 2001 to the third quarter of 2004.¹¹⁸ The decline was even more dramatic between the fourth quarter of 2002 and the third quarter of 2004, when the price for the domestic product declined by 22.9 percent,¹¹⁹ while at the same time the price for Brazilian FCOJM declined by 24.5 percent.¹²⁰ Quarterly shipment volumes for the Brazilian FCOJM pricing product were significantly higher during the latter portion of the investigation period than during the beginning of the period.¹²¹ Although apparent domestic consumption for NFC increased by 9.9 percent during the period examined,¹²² prices for NFC subject imports dropped by 17.7 percent,¹²³ while domestic NFC prices increased 3.2 percent.¹²⁴

Based on the overall pricing data, and the available data indicating interchangeability between the domestic like product and subject imports, we find that the increasing volumes of subject imports caused declines in domestic prices, specifically for the higher-volume FCOJM product. We therefore conclude that the subject imports had significant price-depressing effects. We consequently find significant price effects by the subject imports for purposes of this preliminary determination.¹²⁵

D. Impact of the Subject Imports¹²⁶

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, “shall evaluate all relevant economic factors which have a bearing on

¹¹⁵ CR/PR at Tables V-1 & V-2; CR at V-9; PR at V-4 to V-5.

¹¹⁶ FCOJM subject imports undersold domestically-produced FCOJM in 11 out of 15 quarterly comparisons with margins of underselling ranging from 0.2 percent to 14.7 percent, and underselling margins averaging 4.4 percent. CR at V-9; PR at V-4 to V-5.

¹¹⁷ CR/PR at IV-2.

¹¹⁸ Prices for domestic FCOJM declined overall during the investigation period dropping from *** per pound in the first quarter of 2001 to *** per pound in the third quarter of 2004. CR/PR at Table V-1.

¹¹⁹ Domestic FCOJM prices fell from *** per pound in the fourth quarter of 2002 to *** per pound in the third quarter of 2003. CR/PR at Table V-1.

¹²⁰ CR/PR at Table V-1.

¹²¹ CR/PR at Table V-1.

¹²² Apparent domestic consumption for NFC increased from *** gallons in 2002 to *** gallons in 2003 before falling to *** gallons in 2004. CR/PR at IV-2.

¹²³ Prices for NFC subject imports generally fell over the period examined, declining from *** per pound in the third quarter of 2001 to *** per pound in the fourth quarter of 2004. CR/PR at Table V-2.

¹²⁴ Domestic NFC prices increased from *** per pound in the first quarter of 2002 to *** per pound in the fourth quarter of 2004. CR/PR at Table V-2.

¹²⁵ As previously stated, in any final phase investigation, we will seek to obtain additional information about factors affecting prices for certain orange juice, as well as the impact of U.S. price declines in the face of a decline in subject imports, as seen in 2003-2004 data.

¹²⁶ In its notice of initiation, Commerce estimated that dumping margins for subject imports from Brazil ranged from 24.12 percent to 60.29 percent. 70 Fed. Reg 7234, 7236 (Feb. 11, 2005).

the state of the industry.”¹²⁷ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”¹²⁸

By most measures, the domestic industry’s condition worsened over the period examined despite increasing apparent U.S. consumption. While the absolute volume of subject imports rose sharply over the period examined, domestic shipments of certain orange juice remained unchanged generally.¹²⁹ Domestic producers’ market share declined from 86.9 percent in crop year 2001/02 to 79.1 percent in crop year 2002/03, before recovering to 85.0 percent in crop year 2003/04.¹³⁰ Domestic industry capacity and capacity utilization rose slightly from crop year 2001/02 to crop year 2003/04.¹³¹ While domestic production increased from crop year 2001/02 to 2003/04¹³², most of the increased production was held in inventory. As a result, inventories of certain orange juice increased from 391.4 million pounds in crop year 2001/02 to 481.4 million pounds in crop year 2003/04.¹³³ The ratio of U.S. producers’ inventories to production, U.S. shipments, and total shipments also increased.¹³⁴ The number of production workers and hours worked declined from crop year 2001-2002 to crop year 2003-2004.¹³⁵ Wages paid to workers employed by U.S. processors remained flat or declined during the period examined.¹³⁶

The domestic industry’s financial indicators worsened substantially over the period examined. With respect to domestic processors’ non-toll operations, net sales values decreased along with net sales

¹²⁷ 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 (“In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.”) SAA at 885.

¹²⁸ 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851, 885; Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386, 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 25 n.148 (Feb. 1999).

¹²⁹ The quantity of domestic shipments decreased from 1.23 billion pounds in crop year 2001/02 to 1.12 billion pounds in crop year 2002/03 and increased to 1.24 billion pounds in crop year 2003/04. The value of these shipments declined from \$1.41 billion in crop year 2001/02 to \$1.38 billion in crop year 2002/03 to \$1.36 billion in crop year 2003/04. CR/PR at Table III-9.

¹³⁰ CR/PR at Table IV-2.

¹³¹ Domestic industry capacity was 1.58 billion pounds in crop year 2001/02 and crop year 2002/03 and increased slightly to 1.63 billion pounds in crop year 2003/04. Domestic industry capacity utilization declined from 84.0 percent in crop year 2001/02 to 72.3 percent in crop year 2002/03 and increased to 87.2 percent in crop year 2003/04. CR/PR at Table III-6.

¹³² Domestic industry production declined from 1.33 billion pounds in crop year 2001/02 to 1.15 billion pounds in crop year 2002/03 and increased to 1.42 billion pounds in crop year 2003/04. CR/PR at Table III-6.

¹³³ CR/PR at Table III-12.

¹³⁴ The ratio of inventories to production increased from 29.4 percent in crop year 2001/02 to 33.4 percent in crop year 2003/04. The ratio of inventories to U.S. shipments increased from 31.9 percent in crop year 2001/02 to 38.7 percent in crop year 2003/04. The ratio of inventories to total shipments increased from 29.8 percent in crop year 2001/02 to 36.7 percent in crop year 2003/04. CR/PR at Table III-12.

¹³⁵ The number of workers declined during the investigation period from 3,979 in crop year 2001/02 to 3,414 in crop year 2002/03 to 3,479 in crop year 2003/04. Worker productivity declined from 149.9 pounds of certain orange juice per hour in crop year 2001/02 to 145.0 pounds of certain orange juice per hour in crop year 2002/03, and increased to 177.1 pounds of certain orange juice per hour in crop year 2003/04. CR/PR at Table III-14.

¹³⁶ CR/PR at Table III-14.

quantities from 2002 to 2004.¹³⁷ ¹³⁸ Domestic processors also experienced deteriorating profitability in non-toll operations from 2002 to 2003, and several realized operating losses in 2004; operating income fell from \$27.8 million in 2002 to \$25.0 million in 2003, with operating losses of \$1.3 million in 2004.¹³⁹ Cash flows shows a similar overall decline during the period examined. Although cash flow increased from \$28.1 million in 2002 to \$33.6 million in 2003, it fell to negative \$0.7 million in 2004.¹⁴⁰ For non-toll operations, domestic processors' operating income as a ratio of net sales fell from 3.8 percent of sales in 2002, to 3.6 percent in 2003, and to a negative 0.2 percent in 2004.¹⁴¹ Operating ratios for domestic processors' toll operations were higher in 2004 than in 2002.¹⁴² However, since domestic processors' non-toll operations were much larger than their toll operations, the combined data for toll and non-toll operations for domestic processors show an overall decline in their operating performance for the period examined.¹⁴³ Capital expenditures for domestic processors also declined during the period examined.¹⁴⁴ Domestic growers also experienced fluctuations in their financial performance during the period examined, even though the domestic supply of juice oranges was at near-record high levels.¹⁴⁵ For purposes of this preliminary determination, we conclude that subject imports had a negative impact on the condition of the domestic industry during the period examined. As discussed above, we find the volume of subject imports to be significant and that the subject imports had significant price-depressing effects. We also find that the volume and price effects of the subject imports adversely affected the performance of the domestic industry during the period examined.

V. CONCLUSION

For the reasons stated above, we find a reasonable indication that the domestic industry producing certain orange juice is materially injured by reason of subject imports from Brazil.

¹³⁷ By value, net sales declined from \$737.5 million in 2002 to 686.3 million in 2003 to 685.6 million in 2004. By quantity, net sales decreased from 702.3 million pounds in 2002 to 626.5 million pounds in 2003 and increased to 697.6 million pounds in 2004. CR/PR at Table VI-1.

¹³⁸ Chairman Koplman notes that net sales excluding Citrusuco ***. ***. CR/PR at Table VI-1.

¹³⁹ Chairman Koplman notes that operating income excluding Citrusuco ***. CR/PR at Table VI-1.

¹⁴⁰ Chairman Koplman notes that cash flows excluding Citrusuco ***. CR/PR at Table VI-1.

¹⁴¹ Chairman Koplman notes that for non-toll operations excluding Citrusuco, domestic processors' operating income as a ratio of net sales ***. CR/PR at Table VI-1.

¹⁴² CR/PR at Table VI-7.

¹⁴³ By quantity, net sales for domestic processors on their combined toll and non-toll processing operations declined from \$1.0 billion in 2002 to \$907.6 million in 2003 to \$968.0 million in 2004. By value, net sales for domestic processors on their combined toll and non-toll processing operations declined from \$798.1 million in 2002 to \$737.8 million in 2003 to \$737.2 million in 2004. For combined toll and non-toll operations, domestic processors' operating income as a ratio of net sales declined from 6.1 percent in 2002 to 5.8 percent in 2003 to 3.0 percent in 2004. CR/PR at Table VI-9.

¹⁴⁴ Total capital expenditures for domestic processors increased from \$34.6 million in 2002 to \$37.8 million in 2003 and fell to \$20.4 million in 2004. CR/PR at Table VI-12.

¹⁴⁵ Domestic growers' operating income as a ratio of net sales increased from 5.7 percent in 2002 to 15.1 percent in 2003 and fell to 7.8 percent in 2004. Net sales (by value) for domestic growers fluctuated as well during the period examined increasing from 410.9 million in 2002 to 447.3 million in 2003 and falling to 411.8 million in 2004. CR/PR at Table VI-16.

**DISSENTING VIEWS OF VICE CHAIRMAN DEANNA TANNER OKUN,
COMMISSIONER JENNIFER A. HILLMAN, AND
COMMISSIONER DANIEL R. PEARSON**

Based on the record in this investigation, we determine that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of frozen concentrated orange juice for further manufacturing (FCOJM) from Brazil that is allegedly sold in the United States at less than fair value (LTFV). We find, however, that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Brazil of not-from-concentrate orange juice that is allegedly sold in the United States at LTFV.¹⁴⁶

I. DOMESTIC LIKE PRODUCT

A. In General

To determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”¹⁴⁷ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “producers as a [w]hole 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 the product.”¹⁴⁸ In turn, the Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation”¹⁴⁹

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.¹⁵⁰ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.¹⁵¹ The Commission looks for clear dividing lines among possible like products, and disregards minor variations.¹⁵² Although the Commission must accept the determination of the Department of Commerce

¹⁴⁶ Material retardation is not an issue in this investigation.

¹⁴⁷ 19 U.S.C. § 1677(4)(A).

¹⁴⁸ Id.

¹⁴⁹ 19 U.S.C. § 1677(10).

¹⁵⁰ See, e.g., NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes, and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

¹⁵¹ See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess., at 90-91 (1979).

¹⁵² Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 249 at 90-91 (Congress has indicated that the domestic like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not

(continued...)

(“Commerce”) as to the scope of the imported merchandise allegedly subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.¹⁵³ The Commission must base its domestic like product determination on the record in the investigation before it. The Commission is not bound by prior determinations, even those pertaining to the same imported products, but may draw upon previous determinations in addressing pertinent like product issues.¹⁵⁴

B. Product Description

In its notice of initiation, Commerce defined the imported merchandise within the scope of investigation as:

certain orange juice for transport and/or further manufacturing, produced in two different forms: (1) frozen orange juice in highly concentrated form, sometimes referred to as frozen concentrated orange juice for further manufacturing (FCOJM)¹⁵⁵; and (2) pasteurized single-strength orange juice which has not been concentrated, referred to as Not-From-Concentrate (NFC) . . .¹⁵⁶

Commerce also specifically excluded from the scope reconstituted and retail orange juice stating as follows:

Excluded from the scope of the investigation are 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.¹⁵⁷

¹⁵² (...continued)

‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

¹⁵³ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find a single domestic like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming Commission’s determination of six domestic like products in investigations where Commerce found five classes or kinds).

¹⁵⁴ See Acciai Speciali Terni S.p.A. v. United States, 118 F. Supp.2d 1298, 1304-05 (Ct. Int’l Trade 2000); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1169 n.5 (Ct. Int’l Trade 1988) (particularly addressing like product determination); Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1087-88 (Ct. Int’l Trade 1988).

¹⁵⁵ In its notice of initiation, Commerce explained as follows that the scope with respect to FCOJM covered five specific Brazilian firms: “. . . the scope with regard to FCOJM covers only FCOJM produced and/or exported by those companies who were excluded or revoked from the existing antidumping order on FCOJ from Brazil as of December 27, 2004. Those companies are Cargill Citrus Limitada, Citrosuco Paulista S.A., Frutropic S.A., Montecitrus Industria e Comercio Limitada, and Sucocitrico Cutrale SA (Cutrale).” Id.

¹⁵⁶ 70 Fed. Reg. 7233, 7234 (Feb. 11, 2005)

¹⁵⁷ Id.

Both FCOJM and not-from-concentrate orange juice (NFCOJ) are produced from oranges.¹⁵⁸ Oranges for processing are first graded, sorted, washed, and sized. Juice is then squeezed from the orange using extraction equipment. The juice is then filtered to remove seeds, pulp, peel and other extraneous material, resulting in a single-strength juice, with a concentration generally between 9 and 19 degrees Brix, with an average Brix value of 11.8 degrees.¹⁵⁹ The extracted juice is then separately processed into FCOJM or NFCOJ.¹⁶⁰

Orange juice destined for the concentrate market is reduced from single-strength to six- or seven-strength concentration (typically 65 degrees Brix) through a vacuum and heat evaporation process to remove excess water and certain essences and oils.¹⁶¹ The FCOJM is stored at 20 degrees Fahrenheit or less in tank farms or 55-gallon drums.¹⁶² FCOJM may be loaded and unloaded onto ships, trucks, and trains through large hoses or flexible pipes for transport in 55-gallon drums or bulk storage tanks.¹⁶³ Prior to retail sale, most FCOJM is reconstituted by adding water, oils, and essences to form a single-strength juice and then packaged in ready-to-drink retail size.¹⁶⁴

Orange juice made into NFCOJ is never concentrated, but is de-oiled to 0.2- to 0.4-percent oil levels through a centrifuge, then pasteurized by flash-heating without removing any water content from the juice.¹⁶⁵ NFCOJ may be stored frozen or chilled for up to 18 months, most often in large stainless steel aseptic tanks or 55-gallon drums.¹⁶⁶ NFCOJ is sold in ready-to-drink retail size containers.¹⁶⁷

C. Analysis and Finding

Petitioners contend that the Commission should define a single domestic like product consisting of FCOJM and NFCOJ, coextensive with the scope in this investigation.¹⁶⁸ Respondents disagree and

¹⁵⁸ There are two economically important types of oranges: specialty oranges and round oranges, such as Hamlin, Parson Brown, Pineapple, and Valencia oranges. There are also insignificant quantities of sour and bitter oranges produced. The bulk of the round oranges are processed into juice with the remainder sold into the fresh market. Most of the oranges sold into the fresh market are navel round oranges produced predominantly in California and Arizona, while the vast majority of round oranges used in FCOJM are grown in Florida. CR, PR at I-8-9.

¹⁵⁹ Brix, as used in the citrus industry, is a measure of the total soluble solids in the juice or concentrate. These soluble solids are primarily sugars: sucrose, fructose, and glucose. Citric acid and minerals in the juice also contribute to the soluble solids. Brix is reported as “degrees Brix” and is equivalent to a percentage. For example, 12 degrees Brix juice has 12-percent soluble solids. In addition to sugar content, the Brix scale also measures concentration. The higher the Brix value the higher the level of concentration. Id.

¹⁶⁰ Id.

¹⁶¹ Id.

¹⁶² Id.

¹⁶³ Id.

¹⁶⁴ A smaller quantity of FCOJM is reconstituted into FCOJR and packaged in smaller FCOJR retail-size containers, kept frozen until the time of sale. Id.

¹⁶⁵ Id.

¹⁶⁶ Id.

¹⁶⁷ Id.

¹⁶⁸ Petition at 47; petitioners’ postconference brief at 1.

advocate that the Commission find that FCOJM and NFCOJ are two separate like products.^{169 170} For the reasons set forth below, based on the record in this preliminary phase investigation, we find two separate like products of FCOJM and NFCOJ.

Physical Characteristics and End Uses. FCOJM and NFCOJ both are produced from the extracted juice of round oranges and share some essential flavor and color characteristics. FCOJM and NFCOJ differ, however, in terms of concentration, shelf life, and variety of end uses. Petitioners acknowledge the significant difference in concentration level between the two products, with FCOJM highly concentrated at a Brix value of 65 degrees, compared with single-strength NFCOJ at approximately 12 degrees Brix.^{171 172} At 65 degrees Brix, FCOJM requires the addition of water at a six-to-seven-to-one ratio to achieve the equivalent level single strength of NFCOJ. The record indicates that NFCOJ is a pasteurized product that may be stored frozen or chilled in aseptic containers with a shelf life of 18 months or less.¹⁷³ FCOJM, on the other hand, is not pasteurized, but stored in its frozen state, typically below 20 degrees Fahrenheit, with a considerably longer shelf life.¹⁷⁴

FCOJM and NFCOJ are both ultimately used to produce single-strength retail orange juice for consumption. FCOJM, however, is also used as a beverage base in fruit drinks, carbonated and noncarbonated non-juice drinks, and as an ingredient in food preparations.¹⁷⁵

Interchangeability. The interchangeability of FCOJM and NFCOJ is limited by the different levels of concentration and handling and storage equipment associated with pasteurized NFCOJ. Once concentrated, FCOJM cannot be converted to a not-from-concentrate product. Conversely, NFCOJ is never concentrated, but rather is pasteurized and stored in aseptic containers. Converting NFCOJ to FCOJM would be uneconomical given the higher selling prices for NFCOJ and its specialized handling and transport requirements. Petitioners acknowledge that purchasers seeking NFCOJ would not accept FCOJM product and vice-versa.¹⁷⁶ Responses to the Commission's questionnaire were less conclusive. Some firms indicated that because of differing prices, handling and storage costs, differing regulatory schemes, and the presence of a futures market for FCOJM, NFCOJ and FCOJM were not interchangeable.¹⁷⁷ Six of 11 U.S. processors indicated that FCOJM and NFCOJ were both used to produce single-strength, ready to serve orange juice, while five responding processors indicated that they are not interchangeable.¹⁷⁸ Therefore, these responses support a finding of limited interchangeability.

Channels of Distribution. The record indicates that FCOJM and NFCOJ are predominantly sold to bulk reconstitutors, remanufacturers, and packagers, who in turn sell to the retail market.¹⁷⁹ Petitioners and respondents, however, disagree on the degree to which such purchasers overlap. Petitioners maintain

¹⁶⁹ Citrusuco postconference brief at 2; Louis Dreyfus and Cutrale postconference brief at 39; Tropicana postconference brief at 4.

¹⁷⁰ Respondent Montecitrus urged the Commission to find that "organic orange juice", whether viewed collectively or separately as organic FCOJM or NFCOJ, is a separate like product. Montecitrus postconference brief at 1. In this preliminary investigation, Commerce's scope is not specific regarding organic orange juice and the Commission did not collect separate data on organic product. In any final investigation, we invite parties to address the treatment of organic FCOJM and NFCOJ with respect to defining the domestic like product.

¹⁷¹ Petitioners' postconference brief at 4.

¹⁷² CR at I-6, I-8; PR at I-5, I-6.

¹⁷³ CR, PR at I-9; petitioners' postconference brief at 5; Montecitrus postconference brief at 7-8.

¹⁷⁴ Id.

¹⁷⁵ CR at I-7 & Appendix D at D-3 to D-7, PR at I-5 & Appendix D-3.

¹⁷⁶ Hearing Transcript ("TR") at 60-61.

¹⁷⁷ CR at I-10, app. D at D-6 to D-8; PR at I-7, app. D-3.

¹⁷⁸ Id.

¹⁷⁹ CR at I-14, PR at I-11.

that FCOJM and NFCOJ are purchased by the same firms, whereas respondents state that NFCOJ is not sold to reconstitutors.¹⁸⁰ As previously stated, both FCOJM and NFCOJ are ultimately sold at the retail level as single-strength orange juice.¹⁸¹

Common Manufacturing Facilities, Processes, and Employees. The record indicates that FCOJM and NFCOJ are generally produced by the same firms, utilizing similar manufacturing facilities and employees, but that the production processes differ considerably from juice extraction onward. Six of 11 responding U.S. extractor/processors reported producing both FCOJM and NFCOJ during crop year (CY) 2003/04.¹⁸² Four firms reported producing FCOJM exclusively, while *** reported producing only NFCOJ.¹⁸³

Regarding production processes, from the point of juice extraction onward, FCOJM is manufactured using different equipment and processes.¹⁸⁴ The juice extraction process, though using the same equipment for FCOJM and NFCOJ, is adjusted (*i.e.*, with a higher pressure for FCOJM) depending on the form of juice being manufactured.¹⁸⁵ Juice for FCOJM is then processed through a high pressure and heat evaporation process using separate equipment to achieve a 65-degrees Brix concentration level and stored in tank farms or 55-gallon drums for transport and reconstitution prior to retail sale.¹⁸⁶ Conversely, juice destined for NFCOJ maintains its inherent Brix value, is pasteurized, and at this point is essentially suitable for retail packaging and sale.¹⁸⁷ In addition, the volume of NFCOJ after pasteurization is generally six or seven times greater than that of FCOJM, as no water is removed during processing.¹⁸⁸

Producer and Customer Perceptions. The record is limited with respect to perceptions of FCOJM and NFCOJ held by remanufacturers, packers, and other purchasers of bulk FCOJM and NFCOJ. Petitioners assert that their customers view both products as destined for retail, differing only in convenience and labeling.¹⁸⁹ According to respondents, customers at the retail level consider NFCOJ a higher quality product, with a fresher taste, and are willing to pay a premium over FCOJM.¹⁹⁰ Apparent U.S. consumption for FCOJM was fairly stable during the period examined, declining 1.5 percent, from 930.8 million gallons single-strength equivalent (SSE) to 916.9 million gallons SSE between CY 2001/02 and CY 2003/04. In contrast, apparent domestic consumption of NFCOJ increased 9.9 percent, from 487.4 million gallons SSE to 535.8 million gallons SSE during this same period.¹⁹¹ The differing trends in apparent U.S. consumption of FCOJM and NFCOJ, coupled with the higher price of NFCOJ, suggests differing customer perceptions for these two products at the retail level.¹⁹²

¹⁸⁰ According to petitioners, the top five purchasers of FCOJM are ***. For NFCOJ, the top five purchasers are ***. Compare petitioners' postconference brief at 6, attachment 1 with Tropicana postconference brief at 12.

¹⁸¹ CR at I-14; PR at I-11.

¹⁸² Firms reporting dual production of FCOJM and NFCOJ were ***. CR, PR at table III-5.

¹⁸³ Firms reporting production of only FCOJM were ***. *** reported no production of FCOJM. CR, PR at table III-5.

¹⁸⁴ CR at I-7 to I-9; PR at I-5 to I-7; TR at 58, 158.

¹⁸⁵ TR at 139, 158.

¹⁸⁶ CR at I-6, PR at I-5; TR at 58.

¹⁸⁷ CR at I-9; PR at I-6.

¹⁸⁸ CR at I-9; PR at I-6-7; TR at 58.

¹⁸⁹ CR at app. D, D-14; PR at app. D, D-3.

¹⁹⁰ *Id.*

¹⁹¹ CR, PR at table IV-2.

¹⁹² In any final investigation, we intend to gather information from purchasers of bulk FCOJM and NFCOJ, as well as retail purchasers and consumers, on the perceived differences and similarities for the two products.

Price. The pricing data collected by the Commission indicate that NFCOJ is priced higher than FCOJM.¹⁹³ ¹⁹⁴ In part, the higher prices for NFCOJ reflect the higher storage and transport costs associated with its higher water content.¹⁹⁵ Petitioners and respondents agree, however, that NFCOJ commands higher retail prices than FCOJM.¹⁹⁶

Conclusion. Although FCOJM and NFCOJ share some similar physical characteristics, channels of distribution, and are produced in the same production facilities, there are several clear distinctions between FCOJM and NFCOJ. NFCOJ is never concentrated, preserving its single-strength form from the extraction point to ultimate purchase for consumption. As such, NFCOJ requires different production processing and handling equipment, including pasteurization, in addition to storage and transport in aseptic containers. NFCOJ is labeled differently and is perceived by many customers as a higher quality product that is not interchangeable with FCOJM. FCOJM and NFCOJ are not substitutable at the bulk purchaser level. FCOJM cannot be converted to not-from-concentrate product and the higher cost of production and transport for NFCOJ precludes economic substitution of NFCOJ for FCOJM. Finally, retail and bulk purchase prices are higher for NFCOJ.

Consequently, for purposes of the preliminary phase of this investigation we find FCOJM and NFCOJ to be separate domestic like products.

II. DOMESTIC INDUSTRY

The domestic industry is defined as the “producers as a [w]hole 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 the product.”¹⁹⁷ In defining the domestic industry, the Commission’s general practice has been to include in the industry all domestic production of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.¹⁹⁸ In this investigation, as we have found two like products consisting of FCOJM and NFCOJ, we find two separate domestic industries producing those like products – an industry producing FCOJM and an industry producing NFCOJ.

A. Inclusion of Orange Growers in the Domestic Industries

For purposes of this preliminary investigation, we adopt the analytical framework of the Commission majority concerning whether growers of the raw agricultural product – round oranges – should be included in the domestic industry. Because, however, we find two separate domestic industries in this investigation (FCOJM and NFCOJ), we reach a different conclusion.

With regard to the first prong of the statutory test under 19 U.S.C. §1677(4)(E)(i) and, in particular, regarding whether the raw agricultural input is substantially or completely devoted to the

¹⁹³ U.S. extractor/processors’ reported prices for 65-degrees Brix FCOJM (product 1) ranged between \$0.77 per pound solid equivalent (SE) to \$1.05 per pound SE, compared with a range of \$*** per pound SE to \$*** per pound SE for single-strength, pasteurized NFCOJ (product 2). Similar price differentials were reported for subject imports from Brazil. Compare CR, PR, table V-1, with id., table V-2.

¹⁹⁴ Average unit value (AUV) comparisons indicate that U.S. shipments and subject imports of NFCOJ were valued higher than U.S. shipments and subject imports of FCOJM throughout the period examined. CR, PR at table I-4.

¹⁹⁵ CR at I-14, PR at I-11.

¹⁹⁶ Petitioners’ postconference brief at 12; Tropicana postconference brief at 15-16; Louis Dreyfus and Cutrale postconference brief at 40.

¹⁹⁷ 19 U.S.C. § 1677(4)(A).

¹⁹⁸ See, e.g., United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct. Int’l Trade 1994), aff’d, 96 F.3d 1352 (Fed. Cir. 1996).

production of the processed agricultural product, we note that during the period examined the portion of round oranges devoted to FCOJM production ranged from 49 to 57 percent.¹⁹⁹ In turn, for NFCOJ, the portion of round oranges devoted to NFCOJ production ranged from 37 to 46 percent.²⁰⁰ In either case, we do not determine that the percentage of round oranges devoted to the production of the processed product is sufficient to satisfy the “substantially or completely devoted” standard. Accordingly, because the first prong of the statutory test is not met, we decline to include growers of round oranges in either the FCOJM or NFCOJ industries.

B. Related Parties

We also must determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to 19 U.S.C. § 1677(4)(B). That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers.

In this investigation, there are several U.S. producers that are related to Brazilian producers of both FCOJM and NFCOJ: (1) Citrusuco North America (“Citrusuco”), (2) Cargill Juice North America (“Cargill”), (3) Louis Dreyfus Citrus (“Louis Dreyfus”), and (4) Cutrale Citrus Juice USA (“Cutrale”). Among this group, we find that only Citrusuco should be excluded from the domestic industry. In contrast to other Brazilian-owned U.S. processors of FCOJM and NFCOJ, Citrusuco’s ratio of total subject imports to domestic production was high during the period examined, with imports usually exceeding domestic production by substantial amounts.²⁰¹ This factor tends to indicate that Citrusuco’s interests lie primarily in importation rather than domestic production.²⁰² Moreover, Citrusuco’s financial performance was *** of other U.S. processors during the period examined, suggesting that it benefitted from the allegedly unfair imports.²⁰³ Finally, we note that in CY 2003/04, Citrusuco accounted for only *** percent of domestic production of FCOJM, and only *** percent of domestic production of NFCOJ, and thus excluding its data from consideration would not skew significantly the data for the remainder of those respective industries. Consequently, we define the domestic industries for FCOJM and NFCOJ as including all U.S. processors of these products except for Citrusuco.

III. CONDITIONS OF COMPETITION

Our analysis of whether there is a reasonable indication of material injury by reason of subject imports of FCOJM and NFCOJ is informed by certain important conditions of competition in the U.S. markets for these products. We join in the discussion of the Commission majority concerning supply and demand conditions in the markets, interchangeability considerations, and the role of the FCOJ futures market in influencing product prices.

¹⁹⁹ CR, PR at table III-3.

²⁰⁰ *Id.*

²⁰¹ For FCOJM, Citrusuco’s ratio of imports to domestic production was *** percent in CY 2001/02, *** percent in CY 2002/03, and *** percent in CY 2003/04. For NFCOJ, Citrusuco’s ratio of imports to domestic production was *** percent in CY 2001/02, *** percent in CY 2002/03, and *** percent in CY 2003/04. CR, PR at table III-11.

²⁰² *See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan*, Invs. Nos. 731-TA-741-743, USITC Pub. No. 3016 (Final)(Feb. 1997).

²⁰³ For example, for combined operations producing FCOJM and NFCOJ, Citrusuco’s ratio of operating income to net sales was positive throughout the period, ranging from *** to *** percent, whereas other Brazilian-owned U.S. processors such as Cargill and Louis Dreyfus *** in at least one of the fiscal years reported. CR, PR at table VI-4.

IV. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LESS THAN FAIR VALUE IMPORTS OF FCOJM FROM BRAZIL

In the preliminary phase of antidumping duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.²⁰⁴ In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.²⁰⁵ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”²⁰⁶ In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.²⁰⁷ No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”²⁰⁸

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry producing FCOJM is materially injured by reason of subject imports from Brazil allegedly sold at LTFV.

A. Volume of the Subject Imports

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”²⁰⁹

The quantity of subject imports of FCOJM from Brazil increased from *** gallons SSE in CY 2001/02 to *** gallons SSE in CY 2002/03, a ***-percent increase, then declined in CY 2003/04 to *** gallons SSE, a ***-percent decline.²¹⁰ As a share of apparent U.S. consumption, subject imports increased from *** percent of the market in CY 2001/02 to *** percent in CY 2002/03, then declined to *** percent in CY 2003/04.²¹¹ U.S. producers’ market share declined overall from 80.9 percent in CY 2001/02 to 77.8 percent in CY 2003/04, and the share of nonsubject imports (both from Brazilian producers still subject to the 1987 order and from other sources such as Mexico, Costa Rica, and South Africa), declined consistently over the period examined.²¹² By the end of the period examined, subject imports accounted for nearly *** of total imports, contrasted with only *** percent at the start of the period.²¹³

Although subject import volume and market share declined toward the end of the period examined, subject imports from Brazil, at nearly *** percent, still held a significant share of the market in the most

²⁰⁴ 19 U.S.C. § 1673b(a).

²⁰⁵ 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor. . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B). *See also* Angus Chemical Co., v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

²⁰⁶ 19 U.S.C. § 1677(7)(A).

²⁰⁷ 19 U.S.C. § 1677(7)(C)(iii).

²⁰⁸ Id.

²⁰⁹ 19 U.S.C. § 1677(7)(C)(i).

²¹⁰ CR, PR at table IV-1.

²¹¹ Id. at table IV-2.

²¹² Id.

²¹³ Id. at table IV-1.

recent period for which data were collected, and was significantly higher than in the CY 2001/02 period.²¹⁴ Accordingly, we find, for purposes of the preliminary phase of this investigation, that both the volume and increase in subject import volume were significant during the period examined, both in absolute terms and relative to consumption and production in the United States.

B. Price Effects of the Subject Imports

Section 771(7)(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether --

- (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and
- (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.²¹⁵

As noted in the majority's discussion of the relevant conditions of competition, the record in this investigation indicates that FCOJM produced in the United States and subject imports from Brazil are readily interchangeable. Indeed, the record indicates that most processors and importers either "frequently" or "sometimes" use U.S. and Brazilian product interchangeably.²¹⁶ This ready interchangeability between subject imported FCOJM and U.S.-produced FCOJM signifies that FCOJM is a price-sensitive commodity product. In addition, FCOJM, unlike NFCOJ, is traded as a commodity on the futures market, and record evidence indicates that there is at least some degree of correlation between market and futures prices of FCOJM.²¹⁷

For FCOJM, Commission staff collected pricing data on FCOJM of 65 degrees Brix and six- or seven-strength concentrate (product 1). Pricing data for responding firms in CY 2003/04 accounted for approximately 70 percent of U.S. processors' shipments and approximately 57 percent of U.S. shipments of subject imports from Brazil. For product 1, subject imports from Brazil undersold U.S. product in 11 of 15 quarters where comparisons were possible, with margins of underselling ranging from 0.2 to 14.7 percent.²¹⁸ In the remaining quarters, imports were oversold, with margins ranging from 1.0 to 6.1 percent. Further, we note that margins and incidences of underselling increased slightly toward the end of the period.

With regard to trends in U.S. and subject import prices, U.S. prices increased until early 2003, then fell sharply through the second quarter of 2004 before firming slightly at the end of the period examined. U.S. prices were 14 percent lower at the end of the period than at the beginning.²¹⁹ Subject import prices followed a similar trend, but remained unchanged by the end of the period. Notably, the sharp drop in U.S. prices began in the third quarter of 2003, subsequent to the end of CY 2002/03, the

²¹⁴ Respondents Louis Dreyfus and Cutrale argue that in assessing volume effects of subject imports, the Commission should take into account the relative unimportance of the U.S. market for Brazilian producers. Louis Dreyfus and Cutrale postconference brief at 27-30. We decline to do so, because the fact that the U.S. market is less important to Brazilian producers is relevant, not to the issue of present injury, but to the issue of threat.

²¹⁵ 19 U.S.C. § 1677(7)(C)(ii).

²¹⁶ CR at II-7; PR at II-5.

²¹⁷ CR, PR at table V-3.

²¹⁸ CR, PR at table V-1.

²¹⁹ *Id.*

period in which subject imports from Brazil reached their highest level, and U.S. production was at its lowest level.²²⁰

Consequently, given the prevalence of underselling margins, overall price declines, and the fact that FCOJM is a price-sensitive commodity product, we find that for purposes of this preliminary investigation there has been significant price underselling of the domestic like product by subject imports and domestic prices have been significantly depressed.

C. Impact of the Subject Imports

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.²²¹ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”^{222 223}

We have examined performance indicators in trade and financial data for the domestic industry producing FCOJM.²²⁴ We find that as subject imports of FCOJM entered the U.S. market in increasing volumes, and at generally declining prices, the domestic industry’s financial performance was adversely affected. With respect to trade data, except for increases in capacity, the domestic industry’s performance deteriorated over the three-year period examined. Year-over-year declines were more severe between CY 2001/02 and CY 2002/03 than between CY 2002/03 and CY 2003/04, however, as some indicators began to show improvement in CY 2003/04.²²⁵ The quantity of net sales first declined by *** percent from CY 2001/02 to CY 2002/03, and then increased slightly in CY 2003/04 to a level *** percent below its CY 2001/02 level. In CY 2003/04, the value of net sales increased slightly over its CY 2002/03 level, and unit

²²⁰ CR, PR at table III-6 and table V-1. Louis Dreyfus and Cutrale argue that subject imports have not had an adverse price effect on domestic prices because the price of juice is largely determined by domestic crop and inventory size. Louis Dreyfus and Cutrale postconference brief at 21-26. It is not clear from the record, however, whether the announcement in late 2003 of the large CY 2003/04 U.S. crop was primarily responsible for the decline in domestic prices, because that decline began in third quarter 2003. More generally, the record in this preliminary phase does not enable us to determine conclusively the causal nature of the relationships among U.S. crop size, U.S. inventories, subject imports, and U.S. prices. For example, increases in U.S. inventories, and resulting low prices, may not be caused exclusively by increases in U.S. crop size.

²²¹ 19 U.S.C. § 1677(7)(C)(iii); *see also* SAA at 851 and 885 (“In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports”).

²²² 19 U.S.C. § 1677(7)(C)(iii); *see also* SAA at 851 and 885; Live Cattle from Canada and Mexico, Invs. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 (Feb. 1999) at 25, n.148.

²²³ The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its notice of initiation, Commerce estimated margins of between 24.12 percent and 60.29 percent for imports of certain orange juice from Brazil. 70 Fed. Reg. 7,233, Feb. 11, 2005. Commerce did not provide a specific estimate for FCOJM.

²²⁴ As noted *supra*, in analyzing the condition of the domestic industries in this investigation, we have excluded data from Citrosuco, a firm related to Citrosuco Paulista, S.A., a Brazilian producer and exporter of the subject imports.

²²⁵ CR, PR at table C-1 (excluding Citrosuco).

values declined by *** percent.²²⁶ Hours worked by, and wages paid to, production workers declined overall during the three-year period, while productivity increased.²²⁷ Unit labor costs generally fell over the period examined, while inventories increased substantially.²²⁸

With regard to the industry's financial performance, the industry moved from modest profitability in CY 2001/02 to suffering losses in CY 2003/04. In particular, the ratio of operating income to sales declined from 3.5 percent in CY 2001/02 to a loss of -3.0 percent in CY 2003/04.²²⁹ The worsening financial situation in CY 2003/04 occurred in spite of significant declines in costs, as unit cost-of-goods-sold (COGS) fell by 4.3 percent in CY 2003/04.²³⁰ The growing presence of subject imports, and the declining prices for FCOJM, adversely affected the domestic producers' ability to capitalize on reductions in cost.

Declines in industry performance occurred as subject imports entered the U.S. market in increasing and significant volumes, and gained market share at least in part at the expense of the domestic industry. At the same time, as noted above, subject imports were sold at declining prices and generally undersold domestic product. Domestic industry operating losses occurred primarily in CY 2003/04, a period subsequent to the surge in subject imports.²³¹

Based on the current record, for purposes of this preliminary determination, we conclude that subject imports of FCOJM had an adverse impact on the condition of the domestic industry during the period examined. As discussed above, we find both the absolute and relative increase in volume of subject imports, as well as the underselling by the subject imports, to be significant. Subject imports captured market share at declining prices, causing declines in domestic industry performance, particularly toward the end of the period examined. Operating income, production, operating margins, and net sales all declined as the domestic industry lost market share.

D. Conclusion

For the reasons stated above, we determine that there is a reasonable indication that an industry in the United States is materially injured by reason of subject imports of FCOJM from Brazil that are allegedly sold in the United States at less than fair value.

²²⁶ Id.

²²⁷ Id.

²²⁸ Unit labor costs fell from \$*** per pound in CY 2001/02 to \$*** per pound in CY 2003/04, while inventories increased from 230 million pounds SE in CY 2001/02 to 281 million pounds SE in CY 2003/04. CR, PR at table C-1 (excluding Citrosuco).

²²⁹ CR, PR at table C-1 (excluding Citrosuco).

²³⁰ Id. Moreover, the variance analysis shows that declines in operating income between CY 2002/03 and CY 2003/04 were due primarily to an unfavorable net sales price variance. CR, PR at table VI-6.

²³¹ Respondents contend that to the extent that the domestic industry has experienced any injury over the period examined, it has been due to other causes, such as high domestic production and inventories, coupled with declines in consumption. Louis Dreyfus and Cutrale brief at 30-35. The record in this preliminary phase does not permit us to assess conclusively the relative importance of these factors vis-a-vis subject imports, in terms of their contribution to the injury experienced by the domestic industry. We intend to seek further information on these factors in any final phase of this investigation.

V. NO REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LESS THAN FAIR VALUE IMPORTS OF NFCOJ FROM BRAZIL

For the reasons discussed below, we determine that there is no reasonable indication that the domestic industry producing NFCOJ is materially injured by reason of subject imports from Brazil allegedly sold at LTFV.

A. Volume of the Subject Imports

The quantity of subject imports of NFCOJ from Brazil increased from 4.9 million gallons SSE in CY 2001/02 to 21.2 million gallons SSE in CY 2002/03, a 142-percent increase, then declined in CY 2003/04 to 11.8 million gallons SSE, a 45-percent decline.²³² As a share of apparent U.S. consumption, subject imports increased from 1.0 percent of the market in CY 2001/02 to 3.9 percent in CY 2002/03, then declined to 2.2 percent in CY 2003/04.²³³ U.S. producers' market share declined overall from 98.5 percent in CY 2001/02 to 97.5 percent in CY 2003/04, but remained consistently higher than 95 percent throughout the period examined.²³⁴ By the end of the period examined, subject imports accounted for nearly 90 percent of total imports.²³⁵

Although both the volume and market share of subject imports increased overall over the period examined, albeit from a small base, we do not consider those increases to be significant when viewed in the context of the dominant share of the market held by domestic producers. Moreover, domestic producers lost only 1 percentage point of market share during the period examined. Hence, the volume of subject imports and the increase in that volume are not significant and do not demonstrate a reasonable indication that the subject imports themselves contributed materially to any injury to the domestic industry.

B. Price Effects of the Subject Imports

For NFCOJ, Commission staff collected pricing data on single-strength, not-from-concentrate, orange juice that is pasteurized by flash heating immediately after squeezing the fruit (product 2). Pricing data for responding firms in CY 2003/04 accounted for approximately *** percent of U.S. processors' shipments and approximately *** percent of U.S. shipments of subject imports from Brazil.²³⁶ For product 2, imports from Brazil oversold U.S. product in 10 of 11 quarters where comparisons were possible, with margins of overselling ranging from 12.4 to 38.0 percent.²³⁷ There was only one quarter in which imports undersold the domestic product, and that margin was very small, at 0.6 percent. As such, we do not find significant underselling by imports from Brazil of NFCOJ.

Brazilian prices generally trended downward during the period examined, with U.S. prices showing no particular trend.²³⁸ In addition, there were no confirmed instances of lost sales/lost revenues involving NFCOJ.²³⁹ The fact that U.S. prices remained essentially stable in the face of declining Brazilian prices indicates that subject imports have not depressed or suppressed to a significant degree domestic prices during the period examined.

²³² CR, PR at table IV-1.

²³³ Id. at table IV-2.

²³⁴ Id.

²³⁵ CR, PR at table IV-1.

²³⁶ *Compare* CR, PR at tables V-2, C-2..

²³⁷ CR, PR at table V-2.

²³⁸ Id.

²³⁹ CR, PR at table V-3.

Finally, we acknowledge the fact that average unit values of subject imports declined substantially toward the end of the period. We note, however, that these declines in import unit values appear to have had no significant effect on domestic prices, given the virtually consistent overselling by subject imports, coupled with the small volume of imports. Consequently, in light of the predominant overselling by subject imports, combined with the lack of evidence of price depression or suppression by subject imports, we find that there is no reasonable indication that subject imports had a significant effect on domestic prices during the period examined.

C. Impact of the Subject Imports²⁴⁰

The performance of the domestic industry producing NFCOJ was strong throughout the period examined. With respect to trade data, except for export shipments, all key performance indicators of the NFCOJ industry improved markedly. Domestic production and the volume of shipments rose in each year of the period examined.²⁴¹ While the value and unit value of U.S. shipments declined somewhat from CY 2002/03 to CY 2003/04, the overall trend in these indicators was still positive.²⁴² For example, the value of net sales first increased sharply by 37 percent from CY 2001/02 to CY 2002/03, and then dropped slightly in CY 2003/04 to a level still 18 percent above its CY 2001/02 level. The number of production workers and hours worked by those workers declined overall during the three-year period; however, productivity increased simultaneously, from 113.6 pounds SE per hour in CY 2001/02 to 147.8 pounds SE per hour in CY 2003/04.²⁴³ Unit labor costs declined slightly over the period examined. Although inventories increased, we note that this increase does not appear to have negatively affected the domestic industry.

With regard to the industry's financial performance, the industry was consistently highly profitable throughout the period.²⁴⁴ In particular, the ratio of operating income to sales ranged between 15.4 percent in CY 2002/03 and 16.4 percent in CY 2003/04. In view of this unvarying profitability and steady prices, combined with increases in production, shipments, and sales, we find that the overall increase in subject imports during the period examined, which we find not to be significant, did not contribute importantly to the current condition of the industry. Hence, we find that the impact of the subject imports is not significant.

D. Conclusion

In light of our analysis of the significance of the volume, price effects, and impact of the alleged LTFV sales of subject imports, we determine that there is no reasonable indication that an industry in the United States is materially injured by reason of imports of the subject NFCOJ from Brazil that is allegedly sold in the United States at less than fair value.

²⁴⁰ As noted *supra*, in analyzing the condition of the domestic industries in this investigation, we have excluded data from Citrusuco, a firm related to Citrusuco Paulista, S.A., a Brazilian producer and exporter of the subject imports.

²⁴¹ Production of NFCOJ increased 14.2 percent overall, from 478.9 million pounds SE in CY 2001/02 to 546.9 million pounds SE in CY 2003/04. Capacity utilization rose from 84.0 percent in CY 2001/02 to 91.6 percent in CY 2003/04, as capacity increased irregularly. The quantity of U.S. shipments increased from 465.7 million pounds SE in CY 2001/02 to 525.5 million pounds SE in CY 2003/04. CR, PR at table C-2.

²⁴² CR, PR at table C-2.

²⁴³ *Id.*

²⁴⁴ *Id.*

VI. NO REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF IMPORTS OF NFCOJ ALLEGEDLY SOLD AT LESS THAN FAIR VALUE

Section 771(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”²⁴⁵ The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole” in making its determination whether dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued.²⁴⁶ In making our determination, we considered all statutory factors that are relevant to this investigation.²⁴⁷

The record does not indicate a significant rate of increase in the volume or market penetration of imports of NFCOJ indicating the likelihood of substantially increased imports. First, as noted above, subject import volumes were low and never exceeded *** percent of the U.S. market. Second, although subject import volume and market penetration increased overall during the period examined (albeit from a small base), they declined markedly between CY 2002/03 and CY 2003/04.²⁴⁸

Brazilian producers, although export-oriented, ship the majority of their production to export markets in third countries, and the proportion of Brazilian NFCOJ exports going to the United States is projected to decline over the next two years.²⁴⁹ Although the record indicates that there is significant unused capacity in Brazil for the production of NFCOJ, we note that unused capacity has been prevalent throughout the period examined, and it did not prompt a significant increase in imports.²⁵⁰ Therefore, we conclude that it is unlikely that subject imports will increase to significant levels in light of the nature and magnitude of the subject import declines in the latter part of the period examined, the current insignificant market share held by Brazilian exporters, and the availability of other markets to those exporters.²⁵¹

As discussed above, the subject imports did not have significant price-depressing or suppressing effects on the domestic like product during the period examined. Imports predominantly oversold the domestic like product, with overselling occurring in 10 of 11 price comparisons. The record indicates that domestic prices fluctuated throughout the period, whereas subject import prices declined overall, indicating that subject imports did not affect significantly domestic prices.²⁵² There were no confirmed lost sale allegations.²⁵³ Because there is no likelihood of substantially increased imports, we conclude that it is not likely that the subject imports will have significant price effects in the imminent future.

²⁴⁵ 19 U.S.C. § 1677(7)(F)(ii).

²⁴⁶ Id.

²⁴⁷ 19 U.S.C. § 1677(7)(F)(i). Statutory threat factor (I) is inapplicable because Commerce made no subsidy findings. Statutory threat factor (VII) also is inapplicable because these investigations do not involve imports of both raw and processed agricultural products.

²⁴⁸ Subject imports of NFCOJ from Brazil declined from 21.2 million gallons SSE in CY 2002/03 to 11.8 million gallons SSE in CY 2003/04. CR, PR at table IV-1.

²⁴⁹ CR, PR at table VII-5.

²⁵⁰ Id.

²⁵¹ In particular, we note that Brazilian producers of NFCOJ increased their exports to markets in the European Union (EU) from *** pounds SE in 2001 to *** pounds SE in 2003, and expect further increases in such exports to *** pounds SE in 2005. As a share of total shipments, such exports generally exceeded *** percent throughout the period examined. CR, PR at table VII-5.

²⁵² CR, PR at table V-21.

²⁵³ Id. at table V-3.

Moreover, there is no evidence of any inventories of Brazilian NFCOJ held by U.S. importers.²⁵⁴ For their part, inventories of NFCOJ held in Brazil were substantial, both in their absolute value and as a ratio to production, but as a ratio to production, such inventories did not show a consistently increasing trend during the period examined.²⁵⁵ In any event, there is no indication that the inventories will result in increased shipments to the United States, given our finding that imports are unlikely to increase substantially in the imminent future.

Accordingly, we conclude that there is no reasonable indication that the domestic NFCOJ industry is threatened with material injury by reason of the subject imports.

CONCLUSION

For the foregoing reasons, we determine that the domestic NFCOJ industry is neither materially injured nor threatened with material injury by reason of subject imports from Brazil.

²⁵⁴ Id. at table C-2.

²⁵⁵ Id. at table VII-5.

PART I: INTRODUCTION

BACKGROUND

This investigation results from a petition filed on December 27, 2004, by Florida Citrus Mutual (“FCM”),¹ A. Duda & Sons, Inc. (“A. Duda”), Citrus World, Inc. (“Citrus World”), Peace River Citrus Products, Inc. (“Peace River”),² and Southern Garden Citrus Processing Corp. (“Southern Gardens”), alleging that an industry in the United States is materially injured and threatened with material injury by reason of less-than-fair-value (“LTFV”) imports of frozen concentrated orange juice for further manufacturing (“FCOJM”) and not-from-concentrate pasteurized orange juice (“NFCOJ”), (collectively referred to as “certain orange juice”) from Brazil.³ Information relating to the background of this investigation is provided below.⁴

Effective Date	Action
December 27, 2004	Petition filed with Commerce and the Commission; institution of Commission investigation (70 FR 387, January 4, 2005)
January 19, 2005	Commission's conference ¹
January 25, 2005	Commerce's extension of initiation (70 FR 3510)
February 11, 2005	Commerce's initiation of investigation (70 FR 7233)
March 3, 2005	Commission's vote
March 7, 2005	Commission's determination to Commerce
March 14, 2005	Commission's views to Commerce
¹ A list of witnesses appearing at the conference is presented in app. B.	

¹ FCM is 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.

² On January 31, 2005, petitioners submitted a letter to the Commission modifying the petition to remove Peace River as a petitioner. In a letter sent to the U.S. Department of Commerce (“Commerce”) on January 27, 2005, Peace River stated that it opposes the petition until resolution of the ongoing sunset review of the existing order on frozen concentrated orange juice from Brazil. It reserves its right to change its position on the petition based on the outcome of the sunset review.

³ A complete description of the imported products subject to this investigation is presented in *The Product* section of this part of the report. There is an existing antidumping duty order on FCOJM from Brazil, which is the subject of an ongoing sunset review (Inv. No. 731-TA-282 (Second Review)). The scope of this investigation excludes FCOJM produced by the three companies which are still covered by the existing order: Branco Peres Citrus (“Branco Peres”), Citrovita Agro Industrial (“Citrovita”), and COINBRA-Frutesp (“COINBRA”). The old order has been revoked with respect to other producers in Brazil. On November 16, 2004, domestic interested parties FCM, A. Duda, Citrus World, and Peace River withdrew further interest in continuation of that order.

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

ORGANIZATION OF THE REPORT

Section 771(7)(B) of the Tariff Act of 1930 (the “Act”) (19 U.S.C. § 1677(7)(B)) provides that in making its determinations of injury to an industry in the United States, the Commission--

shall consider (I) the volume of imports of the subject merchandise, (II) the effect of imports of that merchandise on prices in the United States for domestic like products, and (III) the impact of imports of such merchandise on domestic producers of domestic like products, but only in the context of production operations within the United States; and. . . may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.

Section 771(7)(C) of the Act (19 U.S.C. § 1677(7)(C)) further provides that--

In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States is significant.

. . .

In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether . . . (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.

. . .

In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evaluate (within the context of the business cycle and conditions of competition that are distinctive to the affected industry) all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to . . . (I) actual and potential declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity, (II) factors affecting domestic prices, (III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, (IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and (V) in {an antidumping investigation}, the magnitude of the margin of dumping.

Information on the subject merchandise, alleged margins of dumping, and domestic like product is presented in *Part I*. Information on conditions of competition and other relevant economic factors is presented in *Part II*. *Part III* presents information on the condition of the U.S. industry, including data on capacity, production, shipments, inventories, and employment. The volume and pricing of imports of the subject merchandise are presented in *Parts IV and V*, respectively. *Part VI* presents information on the financial experience of U.S. producers. Information obtained for use in the Commission's consideration of the question of threat of material injury is presented in *Part VII*.

SUMMARY DATA

A summary of data collected in this investigation for the U.S. certain orange juice market is presented in appendix C. U.S. industry data are based on official statistics of the U.S. Department of Agriculture ("USDA") and questionnaire responses. U.S. import data were compiled using official statistics of the U.S. Department of Commerce.

PREVIOUS AND RELATED INVESTIGATIONS

The Commission has conducted several investigations regarding frozen concentrated orange juice from Brazil, as shown in table I-1. There currently is an antidumping order in effect covering FCOJM from Brazil, from which nearly all Brazilian exporters have been the subject of revocation since its 1987 issuance.⁵ That order is currently the subject of a full five-year review (Inv. No. 731-TA-326 (Second Review)).

Table I-1
FCOJM from Brazil: Previous investigations

Investigation No.	Year	USITC Publication No.	Action
701-TA-184 (F)	1983	1406	Affirmative ¹
751-TA-10	1984	1623	Affirmative ²
731-TA-326 (F)	1987	1970	Affirmative
731-TA-326 (F) (Remand)	1989	2154	Affirmative ³
731-TA-326 (First Review)	1999	3195	Expedited Continuation
731-TA-326 (Second Review)	2005	--	Full Review Ongoing

¹ On March 2, 1983, Commerce suspended its countervailing duty investigation involving FCOJ from Brazil (48 FR 8839). On February 26, 1999, Commerce terminated the suspended investigation because no domestic interested party responded to the notice of initiation by the applicable deadlines.

² On May 31, 1984, the Commission received a request to review its affirmative injury determination because of changed circumstances, which alleged that the major freeze in Florida in December 1983 and the subsequent decline in the 1983/84 Florida crop as well as the surge in demand for Brazilian juice warranted a review. After receiving public comment, the Commission instituted a changed circumstance review, and determined on December 17, 1984, that the U.S. industry would be threatened with material injury if the suspension agreement were modified or revoked.

³ The Commission's determination was appealed to the U.S. Court of International Trade and remanded to the Commission for further consideration with respect to reevaluation of the evidence concerning certain fair value inventories in Brazil and a reconsideration of inventories in the United States. After reevaluation of the evidence concerning fair value inventories, the Commission again found material injury.

Source: Publications of the U.S. International Trade Commission.

⁵ With respect to FCOJM, the scope of this preliminary investigation includes those manufacturers/exporters of FCOJM in Brazil that were excluded or revoked from the existing antidumping duty order on FCOJM from Brazil. See *The Subject Product* section of this part of the report for identification of the firms.

MAJOR FIRMS INVOLVED IN THE U.S. ORANGE JUICE MARKET

There are 14 major companies believed to process certain orange juice in the United States. *** is the largest U.S. extractor/processor of FCOJM, and *** is the largest extractor/processor of NFCOJ. Other major extractor/processors are ***. Brazil has been the largest source of U.S. imports of certain orange juice throughout the period for which data were collected in this investigation. The largest extractor/processors of certain orange juice in Brazil are ***, followed by **. The largest importer of FCOJM from Brazil in 2003/04 was **. Other major importers of Brazilian FCOJM are **. Only two firms reported imports of NFCOJ from Brazil, **.

NATURE AND EXTENT OF ALLEGED SALES AT LTFV

Commerce has initiated an antidumping investigation based on petitioners' allegations of LTFV sales of certain orange juice from Brazil. The dumping margins (in percent *ad valorem*) as alleged by petitioner and revised by Commerce, range from 24.12 percent to 60.29 percent.⁶

THE SUBJECT PRODUCT

Commerce has defined the imported merchandise subject to investigation as:

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 Not-From-Concentrate (NFC) . . . the scope with regard to FCOJM covers only FCOJM produced and/or exported by those companies who were excluded or revoked from the existing antidumping order on FCOJ from Brazil as of December 27, 2004. Those companies are Cargill Citrus Limitada, Citrosuco Paulista S.A., Frutropic S.A., Montecitrus Industria e Comercio Limitada, and Sucocitrico Cutrale SA (Cutrale).⁷

Reconstituted orange juice and frozen orange juice for retail ("FCOJR") are also excluded from the scope of the investigation. Reconstituted orange juice consists of further manufacture of FCOJM, by adding water, oils, and essences to the orange juice concentrate. FCOJR is concentrated orange juice, typically 42 degrees Brix, in a frozen state, packed in retail sized containers ready for sale to consumers. FCOJR is a finished consumer product produced through further manufacture of FCOJM.

⁶ Notice of Initiation of Antidumping Duty Investigation: Certain Orange Juice from Brazil, 70 FR 7233-7234, February 11, 2005.

⁷ The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") 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, applicable to imports from Brazil; this rate was not reduced as a result of the Uruguay Round of Trade Negotiations.

THE DOMESTIC LIKE PRODUCT

The Commission's determination regarding the appropriate domestic products that are "like" the subject imported product is based on a number of factors, including (1) physical characteristics and uses; (2) common manufacturing facilities and production employees; (3) interchangeability; (4) customer and producer perceptions; (5) channels of distribution; and, where appropriate, (6) price.

Petitioners contend that there is one domestic like product consisting of FCOJM and NFCOJ, coextensive with the scope of the investigation.⁸ Respondents Citrosuco, Cutrale, Louis Dreyfus, and Tropicana contend FCOJM and NFCOJ are separate products.⁹ Respondent Montecitrus Group ("Montecitrus"), a Brazilian processor of organic orange juice, asserts organic orange juice should be a separate product, whether viewed collectively as organic certain orange juice or separately as organic FCOJM and NFCOJ.^{10 11}

Physical Characteristics and Uses

FCOJM is concentrated orange juice of 51 degrees or greater Brix in a frozen state. FCOJM is generally six or seven single strength concentrate, meaning that it requires the addition of water in a six or seven-to-one ratio to produce single strength, ready-to-drink orange juice. Most often FCOJM is at 65 degrees Brix when produced, imported, stored or shipped. The bulk FCOJM is then stored at 20 degrees Fahrenheit or lower in a tank farm or in 55-gallon drums until it is sold or packaged for sale.¹²

NFCOJ is single strength orange juice that is flash-heated to pasteurize it immediately after the fruit is squeezed (the juice is never concentrated). The juice made into NFCOJ is de-oiled with a centrifuge, then either pasteurized, chilled, and packaged or stored for future sale and/or packaging. NFCOJ is stored a number of ways: frozen as blocks in warehouses, frozen in 55-gallon drums, pasteurized and chilled in large aseptic tanks, or pasteurized and chilled in 4' x 4' wooden boxes containing a plastic bag which holds about 300 gallons of juice.¹³

Both FCOJM and NFCOJ are used to produce ready-to-drink orange juice at the retail level. Reportedly, FCOJM may also be used in carbonated and noncarbonated nonjuice drinks, in fruit drinks, as beverage bases, and as an ingredient in jams and jellies.¹⁴

With respect to organic orange juice, the USDA implemented national organic standards on organic production and processing in October 2002. Between 1997 and 2001, the number of acres of organic citrus expanded from 6,099 to 9,741 acres, and accounted for less than one percent of total U.S.

⁸ Petition, pp. 1-13.

⁹ Citrosuco postconference brief, pp. 2-9.

¹⁰ Montecitrus postconference brief, p. 1. Montecitrus proposes the following definition for organic orange juice: *"FCOJM and NFCOJ that has been produced and handled (1) only by an operation or operations certified by a certifying agent duly accredited under the USDA National Organic Program Regulations, 7 C.F.R. § 205 et seq. (The "Regulations"), (2) as employing a production and handling process fully compliant with the provisions of the Regulations relating to products intended for ultimate use in a final product sold to the consumer as USDA Certified "organic" or "100% organic."* Montecitrus postconference brief, pp. 3-4.

¹¹ Montecitrus contends that organic orange juice should be a separate like product because: it has a distinct physical composition and a special application as a health food; it is distributed through unique distribution channels (mostly specialty producers to specialty stores); it is uniquely labeled and marketed; producers and consumers perceive it to be unique from nonorganic orange juice; and it trades in a niche market at a price that is much higher than the price of nonorganic orange juice. Montecitrus postconference brief, pp. 4-11.

¹² Petition, p. 48.

¹³ Petition, p. 48-49.

¹⁴ See comments of *** in app. D, p. D-5.

citrus fruit acreage during 2001. Florida accounted for 6,052 acres of organic citrus in 2001. Organic orange juice reportedly is sold in similar containers and form as nonorganic orange juice, for example with or without pulp, and with or without calcium and added vitamins. It is more expensive and requires more labor and the use of pesticide substitutes such as lady bugs and cedar oil.¹⁵ The varieties of oranges that go into organic oranges are reported to be the same as for nonorganic, but tend to come from the highest quality oranges.¹⁶ The organic orange juice market is almost exclusively NFC orange juice and sells for a premium of up to 100 percent when compared to nonorganic.¹⁷

Manufacturing Processes, Facilities, and Employees

Orange juice is manufactured directly from oranges, almost exclusively round oranges.¹⁸ Although smaller quantities of some specialty oranges such as tangerines are processed into juice, orange juice may not contain more than 10 percent of juice from specialty oranges according to Florida regulations. Oranges for processing are characterized as harder to peel, physically smaller, and less appealing in appearance than oranges for the fresh market. Oranges for processing typically provide a high juice yield, which results from sandy soil and a moist, sub-tropical climate such as the one found in Florida. Oranges for the fresh market are typically grown in drier, more northerly climates such as those found in California and the Mediterranean basin. Orange juice characteristics such as color, flavor, sweetness, acidity, fragrance, pulp content, juice content, and texture are affected by the type of orange, the growing conditions, the time harvested, and the location where the orange was grown. Processors often blend orange juice to attain certain characteristics specified by buyers such as a certain Brix acid ratio ("BAR") which is a measure of the level of sweetness. Before processing, oranges are washed and sized. After the juice is extracted, seeds, pulp, peel, and other extraneous material is filtered or centrifuged out of the juice. The juice, after extraction, is single strength with a concentration generally between 9 and 19 degrees Brix, with the average Brix value of single strength orange juice of 11.8 degrees.¹⁹

Up until this point, orange juice intended for the NFC market and the FCOJ market have gone through a similar process. However, at this stage of processing, juice made into NFC is de-oiled to .02 to .04 percent oil levels with a centrifuge, and then either pasteurized, chilled, and packaged or stored for future sale and/or packaging. NFC may be stored in a number of ways: frozen as blocks, frozen in 55-gallon drums; pasteurized and chilled in large stainless steel aseptic tanks; or, pasteurized and chilled in 4' x 4' wooden boxes containing a plastic bag which holds about 300 gallons of juice. It is eventually packaged into retail size containers.

¹⁵ Staff telephone interview with ***, February 22, 2005.

¹⁶ Staff telephone interview with ***, February 22, 2005.

¹⁷ Staff telephone interview with ***, February 22, 2005.

¹⁸ There are two economically important types of oranges: specialty oranges and round oranges (navel, Hamlin, Parson Brown, Pineapple, and Valencia oranges); there are also insignificant quantities of sour or bitter oranges produced. The bulk of the round oranges are processed into juice with most of the remainder (mainly navel oranges) sold fresh for eating; most of the non-round specialty oranges, such as tangerines, tangelos, and temples, are also sold into the fresh market.

¹⁹ Brix, as used in the citrus industry, is a measure of the total soluble solids in the juice or concentrate. These soluble solids are primarily sugars: sucrose, fructose, and glucose. Citric acid and minerals in the juice also contribute to the soluble solids. Brix is reported as "degrees Brix" and is equivalent to percentage. For example, a juice which is 12 degrees Brix has 12 percent total soluble solids. The Brix scale is a measure of the sugar content within the orange juice and also a measure of the degree of concentration, with the higher the Brix value the higher the level of concentration.

Orange juice intended for the concentrate market is further processed by removing water by evaporation with vacuum and heat to remove excess water in order to obtain a base concentrate of 65 degree Brix which is a seven-to-one strength ratio to single strength juice. The juice is then cooled to 20 degrees Fahrenheit or less in a tank farm or in 55-gallon drums.²⁰ The juice may be transported in 55 gallon drums or bulk storage tanks.²¹ Frozen bulk orange juice may be loaded and unloaded onto ships, trucks, and trains through large hoses or flexible pipes. Orange juice in FCOJM form is the most efficient kind of orange juice to transport and store since it takes up less space and weight than less concentrated forms of orange juice. FCOJM may be reconstituted by adding water, oils, and essences. Reconstitution is generally done near the point of retail sale in order to save on transportation costs. Most FCOJM is reconstituted to single strength and packaged into ready-to-drink retail-size containers. A smaller quantity of FCOJM is reconstituted to FCOJR and packaged in smaller FCOJR retail-size containers which must be kept frozen until the time of sale. NFC may be packaged into retail-size containers at the processing plant, or may be shipped in bulk and packaged into retail-size containers near distribution points for major markets.

Six extractor/processors reported production of both FCOJM and NFCOJ in their U.S. facilities, and the firms accounted for more than *** of U.S. production of certain orange juice during crop year 2003/04. No extractor/processor responding to the Commission's questionnaires reported production of organic certain orange juice.²²

Interchangeability and Customer and Producer Perceptions

As defined by scope of the investigation, FCOJM and NFCOJ are forms of bulk orange juice for transport and/or further manufacturing, and both are ultimately used to produce ready-to-drink single strength orange juice sold at retail. Some industry participants reported that bulk FCOJM and NFCOJ are interchangeable in producing single strength, ready to serve juice.²³ Other firms reported that the products are not interchangeable because of differing handling/storage costs, differing USDA Grade A standards, differing U.S. Food and Drug Administration ("FDA") standards of identity, and because there is a futures exchange for FCOJM but not for NFCOJ.²⁴ USDA Grade A standards are presented in table I-2 and FDA Requirements for Specific Standardized Canned Fruit Juices and Beverages are presented below:

21 CFR Sec. 146.140 Pasteurized orange juice.

*(a) Pasteurized orange juice is the food prepared from unfermented juice obtained from mature oranges as specified in Sec. 146.135, to which may be added not more than 10 percent by volume of the unfermented juice obtained from mature oranges of the species *Citrus reticulata* or *Citrus reticulata* hybrids (except that this limitation shall not apply to the hybrid species described in Sec. 146.135). Seeds (except embryonic seeds and*

²⁰ The high sugar level in the orange juice prevents it from freezing into a solid state. The juice retains a liquid or sludge-like state which allows it to be piped into storage tanks or transported.

²¹ Beginning in the late 1980s the industry and particularly foreign shippers such as Brazil began shifting away from 55 gallon drums and towards bulk storage tanks which are more efficient to load and unload since less labor is needed and more orange juice can be transported on a given sized ship or truck.

²² Industry sources indicated that there are approximately 30 certified organic citrus growers in the United States, and 5 or 6 extractor/processors that are certified to process organic oranges into orange juice. Staff telephone interview with ***, February 23, 2005.

²³ See comments of *** in appendix D, pp. D-7.

²⁴ See comments of *** in appendix D, pp. 7-8.

**Table I-2
Certain orange juice: U.S. Grade A juice standards**

Scoring factors	Frozen concentrated juice	Pasteurized Juice (NFC)
Quality:		
Appearance/coagulation/separation/color	Minimum 36 points, and equal to or better than USDA OJ 5	Minimum 36 points, and not as good as OJ 5 but much better than OJ6
Defects ¹	Minimum 18 points	Minimum 18 points
Flavor	Minimum 36 points	Minimum 36 points
Minimum total score	90 points	90 points
Analytical:		
Minimum soluble orange solids, exclusive of sweetener (by weight of finished product)	(²)	11.0 percent
Brix value/acid ratio ³	11.5:1 to 19.5:1	11.5 to 20.5:1
Concentrate Brix/Brix ⁴	Minimum 41.8	Minimum 11.0
Reconstituted Brix	Minimum 11.8	(²)
Sinking pulp	No requirement	No requirement
Recoverable oil	Maximum 0.035%	Maximum 0.035%
Gel test	No requirement	(²)
Washed pulp solids	In-line permitted	Not permitted
¹ Juice cells, pulp, seeds or portions of seeds, specks, particles of membrane, core, or peel. ² Not applicable. ³ Ratio of the brix value of the concentrate, in degrees Brix, to the grams of anhydrous citric acid per 100 grams of concentrate. ⁴ Total soluble solids when tested with a Brix hydrometer and applying the applicable temperature correction.		
Source: <i>United States Standards for Grades of Orange Juice</i> , Agricultural Marketing Service, USDA, effective January 10, 1983.		

small fragments of seeds that cannot be separated by good manufacturing practice) are removed, and pulp and orange oil may be adjusted in accordance with good manufacturing practice. If the adjustment involves the addition of pulp, then such pulp shall not be of the washed or spent type. The solids may be adjusted by the addition of one or more of the optional concentrated orange juice ingredients specified in paragraph (b) of this section. One or more of the optional sweetening ingredients listed in paragraph (c) of this section may be added in a quantity reasonably necessary to raise the Brix or the Brix- acid ratio to any point within the normal range usually found in unfermented juice obtained from mature oranges as specified in Sec. 146.135. The orange juice is so treated by heat as to reduce substantially the enzymatic activity and the number of viable microorganisms. Either before or after such heat treatment, all or a part of the product may be frozen. The finished pasteurized orange juice contains not less than 10.5 percent by weight of orange juice soluble solids, exclusive of the solids of any added optional sweetening ingredients, and the ratio of the Brix hydrometer reading to the grams of anhydrous citric acid per 100 milliliters of juice is not less than 10 to 1.

(b) The optional concentrated orange juice ingredients referred to in paragraph (a) of this section are frozen concentrated orange juice as specified in Sec. 146.146 and concentrated orange juice for manufacturing as specified in Sec. 146.153 when made from mature oranges; but the quantity of such concentrated orange juice ingredients added shall not contribute more than one-fourth of the total orange juice solids in the finished pasteurized orange juice.

(c) The optional sweetening ingredients referred to in paragraph (a) of this section are sugar, invert sugar, dextrose, dried corn sirup, dried glucose sirup.

(d) (1) The name of the food is "Pasteurized orange juice". If the food is filled into containers and preserved by freezing, the label shall bear the name "Frozen pasteurized orange juice". The words "pasteurized" or "frozen pasteurized" shall be shown on labels in letters not less than one-half the height of the letters in the words "orange juice". (2) If the pasteurized orange juice is filled into containers and refrigerated, the label shall bear the name of the food, "chilled pasteurized orange juice". If it does not purport to be either canned orange juice or frozen pasteurized orange juice, the word "chilled" may be omitted from the name. The words "pasteurized" or "chilled pasteurized" shall be shown in letters not less than one-half the height of the letters in the words "orange juice".

(e) (1) If a concentrated orange juice ingredient specified in paragraph (b) of this section is used in adjusting the orange juice solids of the pasteurized orange juice, the label shall bear the statement "prepared in part from concentrated orange juice" or "with added concentrated orange juice" or "concentrated orange juice added". (2) If one or more of the sweetening ingredients specified in paragraph (c) of this section are added to the pasteurized orange juice, the label shall bear the statement "---- added", the blank being filled in with the name or an appropriate combination of the names of the sweetening ingredients used. However, for the purpose of this section, the name "sweetener" may be used in lieu of the specific name or names of the sweetening ingredients.

(f) Wherever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements specified in this section for naming the optional ingredients used shall immediately and conspicuously precede or follow the name of the food, without intervening written, printed, or graphic matter.

(g) Label declaration. Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

21 CFR Sec. 146.146 Frozen concentrated orange juice.

*(a) Frozen concentrated orange juice is the food prepared by removing water from the juice of mature oranges as provided in Sec. 146.135, to which may be added unfermented juice obtained from mature oranges of the species *Citrus reticulata*, other *Citrus reticulata* hybrids, or of *Citrus aurantium*, or both. However, in the unconcentrated blend, the volume of juice from *Citrus reticulata* or *Citrus reticulata* hybrids shall not exceed 10 percent (except that this limitation shall not apply to the hybrid species described in Sec. 146.135) and from *Citrus aurantium* shall not exceed 5 percent. The concentrate so obtained is frozen. In its preparation, seeds (except embryonic seeds and small fragments of seeds that cannot be separated by good manufacturing practice) and excess pulp are removed, and a properly prepared water extract of the excess pulp so removed may be added. Orange oil, orange pulp, orange essence (obtained from orange juice), orange juice and other orange juice concentrate*

as provided in this section or concentrated orange juice for manufacturing provided in Sec. 146.153 (when made from mature oranges), water, and one or more of the optional sweetening ingredients specified in paragraph (b) of this section may be added to adjust the final composition. The juice of *Citrus reticulata* and *Citrus aurantium*, as permitted by this paragraph, may be added in single strength or concentrated form prior to concentration of the *Citrus sinensis* juice, or in concentrated form during adjustment of the composition of the finished food. The addition of concentrated juice from *Citrus reticulata* or *Citrus aurantium*, or both, shall not exceed, on a single strength basis, the 10 percent maximum for *Citrus reticulata* and the 5 percent maximum for *Citrus aurantium* prescribed by this paragraph. Any of the ingredients of the finished concentrate may have been so treated by heat as to reduce substantially the enzymatic activity and the number of viable microorganisms. The finished food is of such concentration that when diluted according to label directions the diluted article will contain not less than 11.8 percent by weight of orange juice soluble solids, exclusive of the solids of any added optional sweetening ingredients. The dilution ratio shall be not less than 3 plus 1. For the purposes of this section . . . , the term "dilution ratio" means the whole number of volumes of water per volume of frozen concentrate required to produce orange juice from concentrate having orange juice soluble solids of not less than 11.8 percent by weight exclusive of the solids of any added optional sweetening ingredients.

(b) The optional sweetening ingredients referred to in paragraph (a) of this section are sugar, sugar sirup, invert sugar, invert sugar sirup, dextrose, corn sirup, dried corn sirup, glucose sirup, and dried glucose sirup.

(c) If one or more of the sweetening ingredients specified in paragraph (b) of this section are added to the frozen concentrated orange juice, the label shall bear the statement "---- added", the blank being filled in with the name or an appropriate combination of names of the sweetening ingredients used. However, for the purpose of this section, the name "sweetener" may be used in lieu of the specific name or names of the sweetening ingredients.

(d) The name of the food concentrated to a dilution ratio of 3 plus 1 is "frozen concentrated orange juice" or "frozen orange juice concentrate". The name of the food concentrated to a dilution ratio greater than 3 plus 1 is "frozen concentrated orange juice, ----- plus 1" or "frozen orange juice concentrate, ----- plus 1", the blank being filled in with the whole number showing the dilution ratio; for example, "frozen orange juice concentrate, 4 plus 1". However, where the label bears directions for making 1 quart of orange juice from concentrate (or multiples of a quart), the blank in the name may be filled in with a mixed number; for example, "frozen orange juice concentrate, 4 $\frac{1}{3}$ plus 1". For containers larger than 1 pint, the dilution ratio in the name may be replaced by the concentration of orange juice soluble solids in degrees Brix; for example, a 62 deg. Brix concentrate in 3 $\frac{1}{2}$ -gallon cans may be named on the label "frozen concentrated orange juice, 62 deg. Brix".

(e) Wherever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements specified in this section for naming the optional ingredients used shall immediately and conspicuously precede or follow the name of the food, without intervening written, printed, or graphic matter.

(f) Nothing in this section is intended to interfere with the adoption and enforcement by any State, in regulating the production of frozen concentrated orange juice in such State, of State standards, consistent with this section, but which impose higher or more restrictive requirements than those set forth in this section.

(g) *Label declaration. Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.*

Channels of Distribution

FCOJM and NFCOJ are generally sold in bulk to remanufacturers and packagers who then sell to the retail market. Both U.S. extractor/processor and importer questionnaire respondents reported selling certain orange juice to these intermediaries. Some extractor/processors internally consume bulk certain orange juice (particularly NFCOJ) to package orange juice themselves and sell to the retail market. Data compiled from the Commission's questionnaires are presented in table I-3 and indicate that the vast majority of U.S.-produced certain orange juice and virtually all product imported from subject suppliers in Brazil are sold to end users: reconstitutors, repackers, dairy processors, producers of various food products, and retail and food service outlets.

Table I-3
Certain orange juice: Channels of distribution, crop years 2001/02-2003/04

(Shares of total U.S. shipments, in percent)

Item	Distributors			End users		
	2001/02	2002/03	2003/04	2001/02	2002/03	2003/04
FCOJM:						
U.S.-produced	5.7	6.1	5.1	94.3	93.9	94.9
Imports from Brazil, subject	17.7	1.0	0.0	82.3	99.0	100.0
NFCOJ:						
U.S.-produced	8.4	11.6	10.0	91.6	88.4	90.0
Imports from Brazil, subject	0.0	0.0	0.0	100.0	100.0	100.0
TOTAL:						
U.S.-produced	6.0	7.2	5.9	94.0	92.8	94.1
Imports from Brazil, subject	16.6	0.9	0.0	83.4	99.1	100.0

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

Price

The cost of oranges (for processing), which accounts for the vast majority of the value of the product, is the same for both FCOJM and NFCOJ. However, the price for bulk shipments of NFCOJ carries a premium over FCOJM, primarily due to the higher storage and transportation costs associated with the higher water content of NFCOJ. Average unit values compiled from questionnaire responses for FCOJM and NFCOJ are presented in table I-4. Available information on average unit values of organic certain orange juice is presented in table I-5.²⁵ Pricing practices and prices reported for certain orange juice in response to Commission questionnaires are presented in Part V of this report.

²⁵ Reportedly, the labor intensive nature of organic growing methods and the few number of organic growers have an impact on price. Montecitrus postconference brief, p. 13.

Table I-4
Certain orange juice: Average unit values, by type and source, crop years 2001/02-2003/04

(Per pound solids equivalent, except as noted)

Item	Crop year		
	2001/02	2002/03	2003/04
U.S. shipments of U.S.-produced product:			
FCOJM	\$1.02	\$1.08	\$0.90
NFCOJ	1.34	1.40	1.36
Average	1.15	1.23	1.10
NFCOJ/FCOJM premium (<i>percent</i>)	30.9	30.0	50.3
U.S. shipments of imports from Brazil:			
FCOJM	***	***	***
NFCOJ ¹	***	***	***
Average	0.99	0.96	0.77
NFCOJ/FCOJM premium (<i>percent</i>) ¹	***	***	***
Total U.S. shipments:			
FCOJM	***	***	***
NFCOJ	***	***	***
Average	1.13	1.18	1.06
NFCOJ/FCOJM premium (<i>percent</i>)	***	***	***
¹ ***			
Source: Compiled from data submitted in response to Commission questionnaires.			

Table I-5
Certain orange juice: Average unit values of exports to the United States by subject manufacturers/exporters in Brazil, crop years 2001/02-2003/04

* * * * *

PART II: CONDITIONS OF COMPETITION IN THE U.S. MARKET

U.S. MARKET SEGMENTS

Both FCOJM and NFCOJ are sold to dairy processors, retail and food service outlets, producers of various food products, commodity businesses, and reconstitutors and repackers for use in such end products as reconstituted orange juice, ready-to-serve orange juice, multi-fruit juice blends, and baby food. Most U.S. extractor/processors and importers who sell FCOJM and NFCOJ at the wholesale level sell nationally.

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

Based on available information, U.S. extractor/processors of FCOJM and NFCOJ are likely to respond to changes in demand with moderate changes in the quantity of shipments of U.S.-produced FCOJM and NFCOJ to the U.S. market. The main contributing factor to the moderate degree of responsiveness of supply is the availability of inventories and some ability to ship to alternative markets moderated by the unavailability of industry capacity due to the fixed supply of juice oranges, the main raw material for FCOJM and NFCOJ, moderated by the availability of inventories.

Domestic Production

Industry capacity

U.S. extractor/processors' reported capacity utilization for FCOJM increased from 89.9 to 90.7 percent from crop years 2001/02 to 2003/04. U.S. extractor/processors' reported capacity utilization for NFCOJ increased from 75.3 to 82.2 percent from crop years 2001/02 to 2003/04. This level of capacity utilization indicates that U.S. extractor/processors of FCOJM and NFCOJ have some available capacity with which they could increase production in the event of a price change. In addition, the production of FCOJM is largely dependent on the supply of oranges, which is expected to be lower at least in crop year 2004/05 due to damage from the August and September 2004 hurricanes. Juice processors purchase approximately 95 percent of Florida fresh orange production.

Alternative markets

Domestic extractor/processors' export shipments of FCOJM decreased from 8.2 percent of total shipments in 2001/02 to 7.6 percent of total shipments in 2003/04, while their export shipments of NFCOJ fell from 3.2 percent of total shipments in 2001/02 to 1.7 percent of total shipments in 2003/04. These data indicate that U.S. extractor/processors have some ability to divert shipments of FCOJM to or from alternative markets in response to changes in the price of FCOJM, but less ability to divert shipments of NFCOJ to or from alternative markets.

Inventory levels

U.S. extractor/processors' inventories of FCOJM, as a percentage of total shipments, increased from 29.4 percent of their shipments in 2001/02 to 38.1 percent in 2003/04. U.S. extractor/processors' inventories of NFCOJ, as a percentage of total shipments, increased from 30.7 percent of their shipments

in 2001/02 to 34.6 percent in 2003/04. These data indicate that U.S. extractor/processors have the ability to use inventories as a means of increasing shipments of FCOJM and NFCOJ to the U.S. market.

Production alternatives

Some extractor/processors reported they can use the same equipment and machinery and/or the same production and related workers employed to produce NFC single strength orange juice, as well as other types of juices, such as grapefruit and frozen concentrate grapefruit juice, while others cannot. For example, Citrus World has the ability to make grapefruit juice with their equipment, while Southern Gardens cannot use its facilities to make other juices.¹

Subject Imports

Based on available information, the subject Brazilian extractor/processors are likely to respond to changes in demand with large changes in the quantity of shipments of FCOJM and NFCOJ to the U.S. market. The main contributing factors to the large degree of responsiveness of supply are the existence of alternate markets and inventories.

Industry capacity

Subject Brazilian extractor/processors reported capacity utilization for FCOJM decreased from 70.6 percent in 2001 to 63.7 percent in 2003 and for NFCOJ it decreased from 73.9 percent to 63.7 percent between 2001 and 2003. Although this level of capacity utilization would indicate that subject Brazilian extractor/processors have unused capacity with which they could increase production of FCOJM and NFCOJ in the event of a price change, this ability is limited by the availability of juice oranges in Brazil.

Alternative markets

Subject Brazilian extractor/processors' shipments of FCOJM to markets other than the United States (their home market and other export markets) fell from *** percent of shipments in 2001 to *** percent of shipments in 2003, and their shipments of NFCOJ to other markets fell from *** percent of shipments to *** percent of shipments between 2001 and 2003. These data indicate that subject Brazilian extractor/processors have the ability to divert shipments to or from alternative markets in response to changes in the price of FCOJM and NFCOJ.

Inventory levels

Subject Brazilian extractor/processors' inventories, as a percentage of shipments of FCOJM, increased from *** percent of shipments in 2001 to *** percent in 2003 and for NFCOJ decreased from *** percent of shipments in 2001 to *** percent in 2003. These data indicate that subject Brazilian extractor/processors have the ability to use inventories as a means of increasing shipments of FCOJM and NFCOJ to the U.S. market.

¹ Conference transcript, pp. 100-101 (Lucas and Behr).

Production alternatives

In addition to other types of juices, NFCOJ can be processed using the same equipment and machinery as that used to process FCOJM.

U.S. Demand

Based on available information, certain orange juice consumers are likely to respond to changes in the price of certain orange juice with small changes in their purchases of certain orange juice. The main contributing factors to the low degree of responsiveness of demand are low degree of responsive of demand of orange juice at the retail level, the typically moderate cost share of end uses, and the moderate substitutability of other products for certain orange juice.

Demand Characteristics

U.S. demand for certain orange juice depends on the level of demand for downstream products using certain orange juice. FCOJM is used in ready-to-serve orange juice, reconstituted orange juice, and baby food, as well as a dispensed product for use in food-service applications and an ingredient in multi-juice fruit blends.

All responding extractor/processors and all but two responding importers indicated that demand for all certain orange juice had decreased since 2001; with the remaining two responding importers indicating that demand was unchanged. The main reasons reported for decreased demand were the popularity of diets such as Atkins and South Beach, which promote low-carbohydrate foods and the growth of alternative beverages. Petitioners indicated that despite industry marketing efforts, consumer demand remained stagnant and even briefly dipped in response to the popularity of low-carbohydrate diets.² Respondents also indicated that demand is down since 2001.³

Three extractor/processors and one importer indicated that demand for NFCOJ has increased since 2001. Other extractor/processors and importers also cited a trend in consumer preferences away from FCOJM toward NFCOJ and less-than-100-percent juices.

Substitute Products

Six of the 11 responding extractor/processors and four of nine responding importers indicated that there are substitutes for certain orange juice. Their responses included NFCOJ (for FCOJM), reconstituted orange juice, other fruit juices and concentrates, less-than-100-percent juice, multi-fruit blends, soda, and flavored water. Three of six responding extractor/processors and two of five responding importers indicated that changes in the prices of these substitute products affect the price of certain orange juice.

Cost Share

Price changes for FCOJM will likely have a moderate effect on consumption because FCOJM accounts for a wide range of the total cost of the various end products in which FCOJM is used. Reported cost shares varied by range of end products; for orange juice products the reported cost share was generally higher, and for multi-juice blends and less-than-100 percent juices, the cost share was

² Conference transcript, p. 46 (Warlick).

³ Conference transcript, p. 111 (Tilley) and p.131 (Thompson).

generally lower. Extractor/processors and importers reported cost shares ranging from approximately 27 percent for a shelf stable juice blend to 100 percent for single-strength orange juice.

SUBSTITUTABILITY ISSUES

The degree of substitution between domestic and imported FCOJM and NFCOJ depends upon such factors as relative prices, quality, and conditions of sale (e.g., price discounts/rebates, lead times between order and delivery dates, payment terms, product services, etc.). Based on available data, staff believes that while there may be some differences between domestic and imported certain orange juice, there is a relatively high degree of substitution between the FCOJM from the United States and from Brazil and other import sources, and is a relatively moderate degree of substitution between the NFCOJ from the United States and from Brazil and other import sources.

Factors Affecting Purchasing Decisions

Petitioners claim that competition for certain orange juice is based solely on price.⁴ They argued that any difference in color, flavor (Brix-acid ration), and defects a given quantity of FCOJM has does not have a measurable effect on price.⁵ Petitioners also claimed that the same is true for NFCOJ and that U.S. processors such as Tropicana use Brazilian and U.S.-produced NFCOJ interchangeably with sourcing decisions based on price.

Respondents indicated that quality is important in every transaction in the market for certain orange juice and in particular, a seller's credentials determine partially what price they are able to obtain.⁶ They also indicate that price is meaningless without accounting for terms of a potential sale including delivery time, delivery location, mode of delivery, and quality specifications.⁷

Louis Dreyfus indicated that the importance of price depends on the level in the distribution chain and the purchaser.⁸ It indicated that price is "pretty important" with Wal-Mart, one of its biggest customers and with Kroger or any other supermarket chain, price is "very, very important."⁹ Louis Dreyfus also indicated that as long as FCOJM meets the customer's minimum requirements, making a sale becomes a matter of price and service and that there is not much difference in quality between its FCOJM and its competitors' FCOJM.¹⁰

Citrusuco U.S. indicated that making a sale becomes a matter of price with similar kinds of certain orange juice.¹¹ However, it indicated that for NFCOJ, there tends to be more variation in customers' requirements and differentiation in these requirements between sellers of NFCOJ, such as difference in brix and restrictions on certain varieties of oranges.¹² Citrusuco U.S. indicated that major

⁴ Petitioners' postconference brief, p. 33.

⁵ Ibid.

⁶ Conference transcript, p. 191-192, (Tilley).

⁷ Conference transcript, p. 190, (Tilley).

⁸ Conference transcript, p. 189, (Freeman).

⁹ Ibid.

¹⁰ Conference transcript, p. 189-190, (Freeman).

¹¹ Conference transcript, p. 190, (Emmanuel).

¹² Conference transcript, p. 190-191, (Emmanuel).

brands of NFCOJ such as Tropicana, Minute Maid, and Florida Natural each has its own unique quality that it sells to the consumer and has very specific requirements.¹³

Comparisons of Domestic Products and Subject Imports

As indicated in table II-1, four of five firms who are only extractor/processors, three of four firms who are only importers, and all four firms who are both extractor/processors and importers indicated that U.S.-produced FCOJM and imports from Brazil of FCOJM are either “frequently” or “sometimes” used interchangeably. The other remaining responding firms that are only extractor/processors or only importers indicated that U.S.-produced FCOJM and imports from Brazil of FCOJM are “always” used interchangeably. Likewise, four of five responding firms who are only extractor/processors reported that U.S.-produced NFCOJ and imports from Brazil of NFCOJ are either “frequently” or “sometimes” used interchangeably. Both firms that are only importers and the only responding firm that is both an extractor/processor and an importer reported that U.S.-produced NFCOJ and imports from Brazil of NFCOJ are “sometimes” used interchangeably. The other remaining responding firm that is only an extractor/processor indicated that U.S.-produced NFCOJ and imports from Brazil of NFCOJ are “always” used interchangeably.

Table II-1
Certain orange juice: Perceived degree of interchangeability of product produced in the United States and in other countries

Country pair	Number of U.S. extractor/processors (only) reporting				Number of U.S. importers (only) reporting				Number of U.S. firms that are both extractor/processors and importers			
	A	F	S	N	A	F	S	N	A	F	S	N
FCOJM												
U.S. vs. Brazil	1	2	2	0	1	1	2	0	0	3	1	0
U.S. vs. other	1	1	3	0	1	1	1	0	0	3	1	0
Brazil vs. other	1	2	1	0	1	1	1	0	0	3	1	0
NFCOJ												
U.S. vs. Brazil	1	2	2	0	0	0	2	0	0	0	1	0
U.S. vs. other	1	2	2	0	0	0	1	0	0	0	1	0
Brazil vs. other	1	3	1	0	0	0	1	0	0	1	0	0
Note.—A=always; F=frequently; S=sometimes; N=never.												
Source: Compiled from data submitted in response to Commission questionnaires.												

¹³ Conference transcript, p. 192, (Kalik).

As indicated in table II-2, three of five responding firms that are only extractor/processors and two of three responding firms that are only importers reported that differences other than price between U.S.-produced FCOJM and imports from Brazil of FCOJM are “sometimes” a significant factor in their firm’s sales of FCOJM. One of four responding firms that are both extractor/processors and importers reported that U.S.-produced FCOJM and imports from Brazil of FCOJM are “always” a significant factor in their firm’s sales of FCOJM. One of three responding firms that are only extractor/processors, the only responding importer, and the only responding firm that is both an extractor/processor and importer reported that differences other than price between U.S.-produced NFCOJ and imports from Brazil of NFCOJ are “sometimes” a significant factor in their firm’s sales of NFCOJ.

Table II-2
Certain orange juice: Perceived significance of differences other than price between product produced in the United States and in other countries

Country pair	Number of U.S. extractor/processors (only) reporting				Number of U.S. importers (only) reporting				Number of U.S firms that are both extractor/processors and importers			
	A	F	S	N	A	F	S	N	A	F	S	N
FCOJM												
U.S. vs. Brazil	0	1	3	1	1	0	2	0	1	1	1	1
U.S. vs. other	0	1	2	1	2	0	1	0	1	1	1	1
Brazil vs. other	0	1	2	1	1	0	1	0	1	1	1	1
NFCOJ												
U.S. vs. Brazil	0	1	1	1	0	0	1	0	0	0	1	0
U.S. vs. other	0	0	0	1	0	0	0	0	0	0	1	0
Brazil vs. other	0	0	0	1	0	0	0	0	0	0	1	0
Note.—A=always; F=frequently; S=sometimes; N=never.												
Source: Compiled from data submitted in response to Commission questionnaires.												

PART III: U.S. PRODUCERS' PRODUCTION, SHIPMENTS, AND EMPLOYMENT

Information on capacity, production, shipments, inventories, and employment is presented in this section of the report and is based on questionnaire data of 32 U.S. growers and 11 U.S. extractor/processors. These firms are believed to account for approximately 10 percent of U.S. production of oranges for the production of certain orange juice, and more than 90 percent of U.S. production of certain orange juice during the crop year 2003/04. Summaries of U.S. producer (growers and extractor/processors) data are presented in appendix C.

U.S. GROWERS

The vast majority of oranges in the United States are grown either in California or Florida. However, the U.S. orange juice industry is primarily located in Florida. Florida oranges are grown almost exclusively for processing into orange juice,¹ whereas California oranges are largely grown for fresh-consumption with only a small amount used for processing.^{2 3} Table III-1 presents a list of the largest packers of oranges in Florida.

In 2002, according to the 2002 U.S. Census of Agriculture, farms in Florida on which oranges were grown numbered 7,072. In 1987, the same data showed 7,334 farms. The Commission sent a random sample of grower questionnaires to approximately 580 firms identified by the petitioners as domestic growers of juice oranges.⁴ Thirty-two firms provided responses to the Commission's growers questionnaire, but the responses contained limited useable data (i.e., financial data presented in Part VI of this report).⁵

Many processors own groves, or have contractual relationships with the growers and share the risk.⁶ Oranges are typically shipped through cooperatives,⁷ full and partial participation plans,⁸ and intra-

¹ Florida grows mostly Hamlin (early season) and Valencia (late-season) oranges. Over 95 percent of Florida's oranges are processed into juice.

² California grows mostly navel and mandarin oranges.

³ Petition, pp. 3-4.

⁴ The random sampling was generated from an electronic listing of the 11,000 members of the FCM identified in the petition, exhibit 21.

⁵ Approximately 171 of the questionnaires were returned with notes that indicated the recipient never was or currently is not a grower of oranges (i.e., the grove had been sold and/or redeveloped, the owner was deceased, or the individual never grew oranges).

⁶ Petitioners' postconference brief, p. 21.

⁷ Growers that are members of a cooperative deliver all their fruit to a cooperative-owned processing plant, where it is processed and marketed. The members receive the net proceeds after the sale of the FCOJM, allocated according to the number of boxes of oranges delivered by each member and the pounds of solids in each member's oranges. In addition to processing and marketing, most cooperatives provide grove care, maintenance, and harvesting services for their members. *Frozen Concentrated Orange Juice from Brazil* (Inv. No. 731-TA-326 (Final)), USITC Publication 1970, April 1987, p. R-19.

⁸ Under a "full participation plan" a nonmember of a cooperative agrees to deliver all his fruit to a cooperative or corporate processors. The grower's return is determined by an agreed-upon formula based on the final selling price of the FCOJM. This type of arrangement provides the grower with the security of a "home" for their fruit, and also allows them the freedom to search for the best deal available each year. Additionally, the cooperative or processor may provide the grower with grove-care services, but does not usually harvest the fruit. Under a "partial participation plan" the grower may be guaranteed a "floor-price" for the round oranges delivered. *Ibid.*

Table III-1

Certain orange juice: U.S. growers, location, acres harvested and quantity of harvest, by firms, 2003/2004

Firm	Position	Production location(s)	Harvest 2003/04		
			Acres harvested	Yield (boxes per acre)	Quantity (1,000 90-pound boxes)
A. Duda	Support	Florida	***	***	***
Alico	Support	Florida	***	***	***
Ben Hill Griffin	Support	Florida	***	***	***
Bliss Citrus	Support	Florida	***	***	***
BTS	Support	Florida	***	***	***
C.W. Harrison	Support	Florida	***	***	***
Cain Groves	--	Florida	***	***	***
Clonts Groves	Support	Florida	***	***	***
D. Edward Dickinson	Support	Florida	***	***	***
Davis Enterprise	Support	Florida	***	***	***
E.L. Farnsworth Trust	--	Florida	***	***	***
Evans Properties	Support	Florida	***	***	***
Flying V	Support	Florida	***	***	***
GBS	Support	Florida	***	***	***
H. & S. Groves	Support	Florida	***	***	***
Howard Isaacson ¹	--	Florida	***	***	***
Jack Melton Family	Support	Florida	***	***	***
L. Dicks	Support	Florida	***	***	***
Lake Pickett	Support	Florida	***	***	***
Lettie M. Lee	--	Florida	***	***	***
Martin J. McKenna	Support	Florida	***	***	***
Metheny Groves	--	Florida	***	***	***
Orange & Sons ¹	--	Florida	***	***	***
Osgood Groves	--	Florida	***	***	***
P. H. Freeman & Son	Support	Florida	***	***	***
Raymond & Melissa Pierie	Support	Florida	***	***	***
Royal Brothers Grove	Support	Florida	***	***	***
Seminole Tribe of Florida	Support	Florida	***	***	***
Smoak Groves	Support	Florida	***	***	***
Sorrells Groves	Support	Florida	***	***	***
Southern Gardens	--	Florida	***	***	***
Suncrest Citrus	Support	Florida	***	***	***
Travis Wise	Support	Florida	***	***	***
Varn Citrus Growers	Support	Florida	***	***	***
Total			79,566	371	29,508

¹ Questionnaire received too late to include in data.

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

company transfers.⁹ Petitioners reported that individual orange growers are not dedicated solely to processing FCOJM versus NFCOJ, and growers generally do not know which product their oranges will be processed into.¹⁰

U.S. Bearing Acreage, Production, and Yield

As the data in table III-2 indicate, approximately three-quarters of the total domestic orange-bearing acreage is concentrated in Florida. U.S. orange-bearing acreage dropped 4.5 percent between 2001/02 and 2003/04. Total oranges produced decreased in 2002/03, then increased in 2003/04, for an overall increase of 4.3 percent. Similarly, oranges used for processing decreased in 2002/03, then increased in 2003/04, for an overall increase of 5.2 percent. Table III-3 presents the utilization of Florida round orange from 2001/02 to 2003/04. In 2003/04, approximately 56.6 percent of Florida round oranges were used to produce FOCJM and 38.6 percent were used to produce NFCOJ, for a total of 95.2 percent of Florida oranges processed into orange juice.

There are a variety of factors that affect the yield, including: age of the trees,¹¹ fruit disease and pests (such as citrus canker and Mediterranean fruit fly), weather (freezes, hurricanes, droughts), and technological innovations. The Florida orange groves were significantly damaged in 2004 by hurricanes. The hurricanes knocked unripened fruit off trees, damaged and uprooted trees, and killed many trees caught in stagnant flood waters for weeks. In addition, citrus grove machinery and equipment was destroyed, housing of citrus harvesters was leveled, and processing plants in the Peace River area were damaged.¹² Hurricane Charley's damage is estimated to be \$150 million, Hurricane Francis' damage is estimated at \$200 million, and Hurricanes Ivan and Jeanne's cost to the industry has not yet been formally estimated.¹³ The 2003/04 Florida orange crop was the second largest crop ever, and due to the 2004 hurricanes the 2004/05 Florida orange crop is expected to be the smallest since 1991/92.¹⁴ The quality of the crop will be affected too, with the fruit size reduced and the juice of generally poorer color (more yellow than orange).¹⁵ Table III-4 presents data on citrus production 2001/02-2003/04 and forecasts for 2004/05.

⁹ Cash-market sales may be made directly to a processor or to an intermediate handler called a bird dog. A bird dog locates fruit for processors, buys it on the tree, harvests it with his own crew, and delivers the fruit to the processing plant. Purchases may be on a bulk basis, in which all the fruit in the grove is sold for an agreed-upon price, or the fruit may be bought at a set price per box or per pound of solids. Growers on the cash market can seek the highest offer for their fruit, but are subjected to price fluctuations. Also, they have no set "home" for their fruit, and can expect neither assistance in harvesting nor a "home" for their fruit after a freeze. *Ibid.* p. R-20.

¹⁰ Petitioners' post conference brief, p. 17, and comments from growers presented in appendix D.

¹¹ Orange trees typically bear fruit between 4 and 12 years after planting.

¹² Petition, p. 83.

¹³ Petitioners' postconference brief, p. 34.

¹⁴ Citrus Forecast, FASS, February 9, 2005. Surveys as of February 2005 indicated that early/midseason oranges "continued to size at an average rate" and "(D)roppage, above the maximum of the past ten seasons, did slow in the past month and finished below record for this point in time." The survey also indicated that for valencia oranges "it is projected that 21 percent will be lost prior to harvest." *Ibid.*

¹⁵ Cutrale/Dreyfus postconference brief, p. 16.

Table III-2

Oranges: Bearing acreage, production, yield, and shares of production by utilization, by state, crop years 2001/02 to 2003/04

Item	Crop year (October-September)		
	2001/02	2002/03	2003/04
Bearing acreage (1,000 acres)			
Florida	587.0	587.6	564.8
California	195.0	189.5	182.0
Texas	9.3	8.8	8.8
Arizona	6.4	5.8	5.8
Total U.S.	797.6	791.7	761.4
Total oranges produced (million boxes)			
Florida	230.0	203.0	242.0
California	51.5	62.0	52.0
Texas	1.7	1.6	1.7
Arizona	0.5	0.5	0.5
Total U.S.	283.8	267.0	296.1
Fresh oranges (million boxes)			
Florida	9.4	9.7	9.7
California	44.3	49.8	44.8
Texas	1.4	1.1	1.2
Arizona	0.5	0.4	0.4
Total fresh	55.5	61.0	56.0
Processed oranges (million boxes)			
Florida	220.6	193.3	232.3
California	7.3	12.2	7.2
Texas	0.3	0.4	0.5
Arizona	0.1	0.1	0.1
Total processed	228.3	206.0	240.1
Yield (boxes per acre)			
Florida	391.9	345.5	428.5
California	264.1	327.2	285.7
Texas	187.1	178.4	187.5
Arizona	81.2	81.0	81.0
Total U.S.	355.8	337.3	388.9

Table continued on next page.

Table III-2--Continued

Oranges: Bearing acreage, production, yield, and shares of production by utilization, by state, crop years 2001/02 to 2003/04

Item	Crop year (October-September)		
	2001/02	2002/03	2003/04
Share of total oranges produced (percent)			
Fresh:			
Florida	16.9	15.9	17.3
California	79.8	81.6	80.0
Texas	2.5	1.8	2.1
Arizona	0.8	0.7	0.7
Total fresh	19.6	22.9	18.9
Processed:			
Florida	96.6	93.8	96.8
California	3.2	5.9	3.0
Texas	0.2	0.2	0.2
Arizona	0.0	0.0	0.0
Total processed	80.4	77.1	81.1
Total:			
Florida	81.1	76.0	81.7
California	18.1	23.2	17.6
Texas	0.6	0.6	0.6
Arizona	0.2	0.2	0.2
Total U.S.	100.0	100.0	100.0
Note.--Because of rounding, figures may not add to the totals shown.			
Source: <i>Citrus Fruits</i> , 2001 and 2004 summaries, USDA, National Agricultural Statistics Service.			

Table III-3

Round oranges: Utilization of Florida round oranges, crop years 2001/02 to 2003/04

Item	Crop year		
	2001/02	2002/03	2003/04
Quantity (1,000 90-pound boxes)			
Fresh	6,900	6,300	6,200
FCOJM	132,200	98,700	137,000
NFCOJ	85,900	92,500	93,400
Non-certified	2,500	3,400	3,500
Other ¹	2,500	2,100	1,900
Total	230,000	203,000	242,000
¹ Includes CSSOJ, blends, and utilization by non-FCPA members.			
Source: "Florida Citrus Outlook 2004-05 Season", Florida Department of Citrus, p. 17, October 27, 2004.			

**Table III-4
Oranges: Production, by varieties and states, crop years 2001/03-2003/04, and forecast 2004/05**

Item	Crop year			
	2001/02	2002/03	2003/04	2004/05
Quantity (1,000 90-pound boxes)				
Early, midseason, and navel oranges:				
Florida	128,000	112,000	126,000	84,000
California	32,000	42,000	38,000	44,000
Texas	1,530	1,350	1,420	1,500
Arizona	270	200	300	240
Total	161,800	155,550	165,720	129,740
Valencia oranges:				
Florida	102,000	91,000	116,000	78,000
California	19,500	20,000	14,000	16,500
Texas	210	220	230	250
Arizona	250	270	170	190
Total	121,960	111,490	130,400	94,940
All oranges:				
Florida	230,000	203,000	242,000	162,000
California	51,500	62,000	52,000	60,500
Texas	1,740	1,570	1,650	1,750
Arizona	520	430	470	430
Total	283,760	267,000	296,120	224,680
Source: Citrus Forecasts, FASS, October 2004 and February 2005.				

U.S. EXTRACTOR/PROCESSORS

Orange juice processors extract the juice from oranges and either concentrate the juice by evaporation to produce FCOJM, or pasteurize the juice to produce NFCOJ. The number of Florida citrus juice extractors is believed to have numbered 19 in the 2000-01 season.¹⁶ The same source listed 29 extractors in the 1986-87 season. These data indicate a trend towards consolidation, particularly among orange processors.

The Commission sent extractor/processor questionnaires to 73 firms. Petitioners reported that there are 14 major processors, of which six are also growers.¹⁷ Eleven firms provided responses to the Commission's processors' questionnaire and are believed to have accounted for more than 90 percent of U.S. production of certain orange juice in crop year 2003/04.¹⁸ *** is the largest producer of FCOJM

¹⁶ Florida Citrus Processors Association Statistical Summary 2000-2001 Season, Florida Citrus Processors Association Membership 2000-01 Season, pp. 2-3.

¹⁷ A. Duda, Southern Gardens, Citrus World, Holly Hill, Sunkist, and TCX, either directly own groves or are part of a cooperative. Petition, p. 6.

¹⁸ Based on questionnaire data and information provided in the petition, exhibit 4.

and *** is the largest producer of NFCOJ.¹⁹ Presented in table III-5 is a list of the U.S. processors that responded to the Commission's processors' questionnaire. Also presented is information concerning each company's position on the petition, production locations, product produced, toll agreements since January 1, 2001, and their share of reported crop year 2003/04 domestic production of certain orange juice. Four of the major U.S. processors, Cargill, Citrusuco (NA), Cutrale (USA), and Louis Dreyfus, are related to Brazilian processors of certain orange juice, and they import subject orange juice as well.^{20 21}

Several U.S. processors have gone out of business during the period of investigation. Citrus Service closed its plant in 2000.²² Golden Gem closed its processing facilities in 2001. Pasco Beverage closed its FCOJM processing plant in May 2004. Holly Hill Fruit Products recently reported that it would be shutting down its FCOJM processing business for the 2004/05 season. Lykes-Pasco has gone completely out of business.²³

U.S. Extractor/Processors' Capacity, Production, And Capacity Utilization

Data on U.S. extractor/processors' capacity, production, and capacity utilization for certain orange juice are presented in table III-6. Total U.S. capacity was stable from 2001/02 to 2002/03, then rose by 2.8 percent from 2002/03 to 2003/04. U.S. production of orange juice fell 13.9 percent from 2001/02 to 2002/03, then rose by 24.0 percent from 2002/03 to 2003/04. Capacity utilization fell by 11.6 percentage points from 2001/02 to 2002/03 then rose by 14.9 percentage points in 2003/04. U.S. producers reported the following constraints on their production: material availability, equipment, raw material supply and cost, sales volume, availability of qualified skilled laborers, machine capacity, and number of orders received. Processors listed the following constraints to their production capabilities: fruit quality and availability, extractors, government permits, storage availability, evaporator capacity, extractor capacity, feedmill capacity, length of fruit harvesting season, machine filler operating speeds, availability of holding tank space for product, environmental issues, fruit juice yield, and investment capital.

¹⁹ Tropicana's postconference brief, p. 2. Tropicana reported ***. Staff telephone interview with ***, February 10, 2005.

²⁰ Cutrale purchased the Minute Maid orange juice processing plants from Coca-Cola, but sold the citrus groves to a group affiliated with the King Ranch in Texas. Citrusuco purchased the Alcoma Packing Company but did not buy the citrus groves owned by Alcoma. Louis Dreyfus purchased the Indiantown Caulkins plant and Winter Garden processing cooperative, and it does not own any groves. Cargill purchased the Citrus-Hill processing plant from Proctor and Gamble. Petition, p. 6. However, Cutrale's processing plants in Florida have contractual relationships with fixed prices with customers such as Minute Maid, Johanna Farms, and Dean Foods. Citrusuco's Florida processing plants have contracts with Tropicana and Lykes. Petitioners' postconference brief, p. 28.

²¹ Citrusuco's investments totals over \$100 million, Cutrales' over \$200 million, and Louis Dreyfus' over \$100 million. Cutrale/Dreyfus postconference brief, p. 19.

²² Citrus Service processed organic oranges. Petition, p. 94.

²³ Petitioners' postconference brief, p. 45.

Table III-5

Certain orange juice: U.S. extractor/processors, positions on the petition, U.S. production locations, product produced, toll agreements, and shares of reported 2003/04 production

Firm	Position on petition	Production location(s)	Toll agreements since January 1, 2001	U.S. production (1,000 pounds SSE)			Shares of reported 2004 production (percent)		
				FCOJM	NFCOJ	Total	FCOJM	NFCOJ	Total
A. Duda	Supports	Florida	***	***	***	***	***	***	***
Cargill	***	Florida	***	***	***	***	***	***	***
Citrosuco (USA)	Opposes	Florida	***	***	***	***	***	***	***
Citrus World	Supports	California, Florida	***	***	***	***	***	***	***
Cutrale (NA)	Opposes	Florida	***	***	***	***	***	***	***
Freshco	***	Florida	***	***	***	***	***	***	***
Holly Hill	Supports	Florida	***	***	***	***	***	***	***
Louis Dreyfus	Opposes	Florida	***	***	***	***	***	***	***
Peace River	Opposes	Florida	***	***	***	***	***	***	***
Southern Gardens	Supports	Florida	***	***	***	***	***	***	***
Tropicana	Opposes	Florida	***	***	***	***	***	***	***
Total				868,275	552,842	1,421,117	100.0	100.0	100.0
Note.—Because of rounding, figures may not add to the totals shown.									
Source: Compiled from data submitted in response to Commission questionnaires.									

Table III-7 presents reported changes in extractor/processors' operations since January 1, 2001. *** reported changes in their firm's operations. Table III-8 presents information from U.S. processors that reported production of other products using the same equipment and machinery and production and related workers, and shares of certain orange juice production. Six processors' equipment and workers are entirely dedicated to the production of certain orange juice. The remaining five processors produce other fruit juices using the same equipment and workers.

U.S. Extractor/Processors' U.S. Shipments and Export Shipments

Data on domestic producers' shipments of certain orange juice are presented in table III-9. Commercial shipments accounted for *** percent of U.S. shipments of certain orange juice in 2003/04. The quantity of U.S. shipments fell by 8.5 percent from 2001/02 to 2002/03, then rose by 10.6 percent in 2003/04. The value of U.S. shipments fell 3.1 percent from 2001/02 to 2003/04. The unit value of U.S.

Table III-6
Certain orange juice: Reported U.S. production capacity, production, and capacity utilization, 2001/02-2003/04

Item	Crop year		
	2001/02	2002/03	2003/04
FCOJM:			
Capacity (1,000 pounds solids equivalent)	939,148	891,391	956,823
Production (1,000 pounds solids equivalent)	844,712	600,713	868,275
Capacity utilization (percent)	89.9	67.4	90.7
NFCOJ:			
Capacity (1,000 pounds solids equivalent)	644,986	692,744	672,311
Production (1,000 pounds solids equivalent)	485,773	545,384	552,842
Capacity utilization (percent)	75.3	78.7	82.2
Total:			
Capacity (1,000 pounds solids equivalent)	1,584,134	1,584,135	1,629,134
Production (1,000 pounds solids equivalent)	1,330,485	1,146,097	1,421,117
Capacity utilization (percent)	84.0	72.3	87.2
Note.—Ratios calculated from firms supplying both numerator and denominator.			
Source: Compiled from data submitted in response to Commission questionnaires.			

Table III-7
Certain orange juice: U.S. processors and changes in operations since January 1, 2001

* * * * *

Table III-8
Certain orange juice: U.S. producers, production of other products on equipment and machinery and using the same production and related workers employed to produce certain orange juice, shares of certain orange juice production on the same equipment and using the same workers, 2003/04

* * * * *

Table III-9

Certain orange juice: U.S. producers' shipments,¹ by type, 2001/02-2003/04

Item	Crop year		
	2001/02	2002/03	2003/04
Quantity (1,000 pounds solids equivalent)			
FCOJM:			
Commercial shipments	***	***	***
Internal consumption	***	***	***
U.S. shipments	758,226	599,378	718,438
Export shipments	67,358	38,456	58,849
Total shipments	825,584	637,834	777,287
NFCOJ:			
Commercial shipments	***	***	***
Internal consumption	***	***	***
U.S. shipments	470,043	524,930	525,507
Export shipments	15,485	8,770	8,835
Total shipments	485,528	533,700	534,342
Total:			
Commercial shipments	***	***	***
Internal consumption	***	***	***
U.S. shipments	1,228,269	1,124,308	1,243,945
Export shipments	82,843	47,226	67,684
Total shipments	1,311,112	1,171,534	1,311,629
Value (1,000 dollars)			
FCOJM:			
Commercial shipments	***	***	***
Internal consumption	***	***	***
U.S. shipments	776,935	644,503	649,190
Export shipments	68,501	38,853	53,701
Total shipments	845,436	683,356	702,891
NFCOJ:			
Commercial shipments	***	***	***
Internal consumption	***	***	***
U.S. shipments	630,227	733,818	713,769
Export shipments	19,673	11,144	10,179
Total shipments	649,900	744,962	723,948
Total:			
Commercial shipments	***	***	***
Internal consumption	***	***	***
U.S. shipments	1,407,162	1,378,321	1,362,959
Export shipments	88,174	49,997	63,880
Total shipments	1,495,336	1,428,318	1,426,839

Table continued on next page.

Table III-9--Continued

Certain orange juice: U.S. producers' shipments, by type, 2001/02-2003/04

Item	Crop year		
	2001/02	2002/03	2003/04
<i>Unit value (per pound solids equivalent)</i>			
FCOJM:			
Commercial shipments	\$***	\$***	\$***
Internal consumption	***	***	***
U.S. shipments	1.02	1.08	0.90
Export shipments	1.02	1.01	0.91
Total shipments	1.02	1.07	0.90
NFCOJ:			
Commercial shipments	***	***	***
Internal consumption	***	***	***
U.S. shipments	1.34	1.40	1.36
Export shipments	1.27	1.27	1.15
Total shipments	1.34	1.40	1.35
Total:			
Commercial shipments	***	***	***
Internal consumption	***	***	***
U.S. shipments	1.15	1.23	1.10
Export shipments	1.06	1.06	0.94
Total shipments	1.14	1.22	1.09
<i>Share of quantity (percent)</i>			
FCOJM:			
Commercial shipments	***	***	***
Internal consumption	***	***	***
U.S. shipments	91.8	94.0	92.4
Export shipments	8.2	6.0	7.6
Total shipments	100.0	100.0	100.0
NFCOJ:			
Commercial shipments	***	***	***
Internal consumption	***	***	***
U.S. shipments	96.8	98.4	98.3
Export shipments	3.2	1.6	1.7
Total shipments	100.0	100.0	100.0
Total:			
Commercial shipments	***	***	***
Internal consumption	***	***	***
U.S. shipments	93.7	96.0	94.8
Export shipments	6.3	4.0	5.2
Total shipments	100.0	100.0	100.0

Table continued on next page.

Table III-9--Continued
Certain orange juice: U.S. producers' shipments, by type, 2001/02-2003/04

Item	Crop year		
	2001/02	2002/03	2003/04
Share of value (percent)			
FCOJM:			
Commercial shipments	***	***	***
Internal consumption	***	***	***
U.S. shipments	91.9	94.3	92.4
Export shipments	8.1	5.7	7.6
Total shipments	100.0	100.0	100.0
NFCOJ:			
Commercial shipments	***	***	***
Internal consumption	***	***	***
U.S. shipments	97.0	98.5	98.6
Export shipments	3.0	1.5	1.4
Total shipments	100.0	100.0	100.0
Total:			
Commercial shipments	***	***	***
Internal consumption	***	***	***
U.S. shipments	94.1	96.5	95.5
Export shipments	5.9	3.5	4.5
Total shipments	100.0	100.0	100.0
¹ A majority of U.S. processors blend imported or purchased orange juice with their production before shipping, therefore reported shipment numbers have been estimated by the processors to remove such imports or purchases. Note.—Because of rounding, figures may not add to the totals shown. Source: Compiled from data submitted in response to Commission questionnaires.			

shipments increased 7.0 percent from 2001/02 to 2002/03 then fell 10.6 percent in 2003/04. Five processors reported internal consumption of orange juice.²⁴ Internal consumption of FCOJM ranged from *** percent to *** percent of U.S. processors' total shipments. Internal consumption of NFCOJ ranged from *** percent to *** percent of U.S. processors' total shipments.²⁵ Eight processors reported exports of certain orange juice and the data are presented in table III-10.²⁶ ²⁷ Exports decreased 43.0 percent from 2001/02 to 2002/03 and then increased 43.3 percent in 2003/04. The value of exports similarly decreased 43.3 percent from 2001/02 to 2002/03 and then increased 27.8 percent in 2003/04.

²⁴ ***.

²⁵ ***.

²⁶ ***.

²⁷ The FCOJM export shipments were made to ***, and the NFCOJ export shipments were made to ***.

Table III-10
Certain orange juice: U.S. producers' export shipments, by type, 2001/02-2003/04

* * * * *

U.S. Extractor/Processors' Imports and Purchases of Imports

A majority of processors have imported or purchased imports of certain orange juice from Brazil, because Brazilian FCOJM is often mixed with Florida orange juice to standardize color, and is occasionally imported to make up for seasonal supply shortfalls.²⁸ Table III-11 presents the U.S. producers' direct imports and purchases of subject orange juice. Four U.S. producers, ***, reported that they imported subject orange juice, and seven producers, ***, reported that they purchased imports of subject orange juice.

Table III-11
Certain orange juice: U.S. extractor/processors' imports and purchases, crop years 2001/02-2003/04

* * * * *

Since the U.S. price of orange juice is generally higher than world market prices, U.S. orange juice is typically not competitive in export markets. However, U.S. processors can lower their price for export by applying to their exports the duty drawback that they receive when they pay duties on imported juice and then export domestic juice of the same kind or condition.²⁹

U.S. Extractor/Processors' Inventories

Inventory capacity is a constraint for the orange juice industry. Although FCOJM can remain in inventory for a long time, there is only so much inventory holding capacity for FCOJM and NFCOJ available, and each year's crop demands inventory space that is being taken up by the previous year's crop. When the hurricanes hit in 2004, processors had what is considered an extremely large amount of orange juice inventories, 40 weeks worth.³⁰ Due to orange crop loss from the hurricanes, the inventory level is projected to be much lower in 2005.³¹ Data on end-of-period inventories of certain orange juice are presented in table III-12. Inventories fell 5.0 from 2001/02 to 2002/03, then rose 29.5 percent in 2003/04. Inventories as a share of total shipments rose 6.9 percentage points from 2001/02 to 2003/04. Table III-13 presents USDA data on U.S. inventories of certain orange juice.³²

U.S. Employment, Wages, and Productivity

Data provided by U.S. extractor/processors on the number of production and related workers ("PRWs") engaged in the production of certain orange juice, the total hours worked by such workers, and wages paid to such PRWs during the period of investigation are presented in table III-14.

²⁸ Conference transcript, pp. 58-59 (Lucas) and 132 (Freeman).

²⁹ Imports from Mexico, Belize, and Costa Rica cannot be used for this purpose because their juice enters free of duty. Cutrale/Dreyfus postconference brief, p. 4.

³⁰ Cutrale/Dreyfus postconference brief, p. 6, fn. 12.

³¹ Ibid, p. 17.

³² Table III-11 contains stocks of U.S. produced orange juice blended with imports of certain orange juice.

Table III-12
Certain orange juice: U.S. producers' end-of-period inventories, 2001/02-2003/04

Item	Crop year		
	2001/02	2002/03	2003/04
FCOJM:			
Inventories (<i>1,000 pounds solids equivalent</i>)	242,532	205,411	296,468
Ratio to production (<i>percent</i>)	28.7	34.2	34.1
Ratio to U.S. shipments (<i>percent</i>)	32.0	34.3	41.3
Ratio to total shipments (<i>percent</i>)	29.4	32.2	38.1
NFCOJ:			
Inventories (<i>1,000 pounds solids equivalent</i>)	148,822	166,447	184,947
Ratio to production (<i>percent</i>)	30.6	30.5	33.5
Ratio to U.S. shipments (<i>percent</i>)	31.7	31.7	35.2
Ratio to total shipments (<i>percent</i>)	30.7	31.2	34.6
Total:			
Inventories (<i>1,000 pounds solids equivalent</i>)	391,354	371,858	481,415
Ratio to production (<i>percent</i>)	29.4	32.4	33.9
Ratio to U.S. shipments (<i>percent</i>)	31.9	33.1	38.7
Ratio to total shipments (<i>percent</i>)	29.8	31.7	36.7
Source: Compiled from data submitted in response to Commission questionnaires.			

Table III-13
Certain orange juice: U.S. producers' carryover stocks, ratio to production, and period changes, 2001/02-2003/04¹

Item	Crop year			Period changes (<i>percent</i>)		
	2001/02	2002/03	2003/04	02-04	02-03	03-04
U.S. production (<i>1,000 gallons solids equivalent</i>)	1,303,603	1,156,479	1,371,939	5.2	-11.3	18.6
Beginning stocks (<i>1,000 gallons solids equivalent</i>)	652,319	625,995	656,556	0.6	-4.0	4.9
Ending stocks (<i>1,000 gallons solids equivalent</i>)	622,056	656,556	751,817	20.9	5.5	14.5
Ratio of ending stocks to U.S. production (<i>percent</i>)	47.7	56.8	54.8	7.1	9.1	-2.0
¹ Stocks contain U.S. production blended with imports of certain orange juice.						
Source: <i>PS&D Online</i> , FAS, USDA, November 2004.						

Table III-14

Certain orange juice: Average number of production and related workers producing certain orange juice, hours worked, wages paid to such employees, and hourly wages, productivity, and unit labor costs, 2001/02-2003/04

Item	Crop year		
	2001/02	2002/03	2003/04
FCOJM:			
PRWs (<i>number</i>)	1,850	1,571	1,841
Hours worked (<i>1,000</i>)	4,403	3,403	4,086
Wages paid (<i>\$1,000</i>)	55,350	41,464	49,659
Hourly wages	\$12.57	\$12.18	\$12.15
Productivity (<i>pounds solids equivalent per hour</i>)	191.8	176.5	212.5
Unit labor costs (<i>per pound solids equivalent</i>)	\$0.07	\$0.07	\$0.06
NCOJ:			
PRWs (<i>number</i>)	2,129	1,843	1,638
Hours worked (<i>1,000</i>)	4,474	4,501	3,936
Wages paid (<i>\$1,000</i>)	66,262	76,634	71,987
Hourly wages	\$14.81	\$17.03	\$18.29
Productivity (<i>pound solids equivalent per hour</i>)	108.6	121.2	140.4
Unit labor costs (<i>per pound solids equivalent</i>)	\$0.14	\$0.14	\$0.13
Total:			
PRWs (<i>number</i>)	3,979	3,414	3,479
Hours worked (<i>1,000</i>)	8,877	7,904	8,022
Wages paid (<i>\$1,000</i>)	121,612	118,098	121,647
Hourly wages	\$13.70	\$14.94	\$15.16
Productivity (<i>pounds solids equivalent per hour</i>)	149.9	145.0	177.1
Unit labor costs (<i>per pound solids equivalent</i>)	\$0.09	\$0.10	\$0.09
Source: Compiled from data submitted in response to Commission questionnaires.			

PART IV: U.S. IMPORTS, APPARENT U.S. CONSUMPTION, AND MARKET SHARES

U.S. IMPORTERS

The Commission sent importer questionnaires to 64 firms believed to be importers of certain orange juice, as well as to all U.S. producers.¹ Usable questionnaire responses were received from eight companies that are believed to account for the vast majority of the quantity of U.S. imports from Brazil during the period for which data were collected.² The largest importer of FCOJM from Brazil in 2003/04 was ***. Other major importers of Brazilian FCOJM are ***. Only two firms reported imports of NFCOJ from Brazil: ***.³

U.S. IMPORTS

NFCOJ was not imported into the U.S. market until recently, with the development of new prototype tanker ships capable of transporting NFCOJ in a cost-effective manner.⁴ In particular, Citrusuco launched two new-generation ships in 2003, which can each haul more than 33,000 tons of NFCOJ, and travel and unload faster than any other ships which carry orange juice.⁵ U.S. imports of certain orange juice are presented in table IV-1.⁶ Brazil is the largest foreign supplier of certain orange juice to the United States, accounting for 67.2 percent of the quantity total imports in 2003/04, and 71.3 percent of the value.⁷ The quantity of imports of certain orange juice from all sources in Brazil increased by 270.3 percent from 2001/02 to 2002/03, and then decreased 26.0 percent in 2003/04. The value of imports of certain orange juice from Brazil increased by 230.9 percent from 2001/02 to 2002/03, and then decreased 37.1 percent in 2003/04. The quantity of imports from other countries fell 15.1 percent from 2001/02 to 2003/04.

¹ The Commission sent questionnaires to those firms identified in the petition, and firms identified by the U.S. Customs and Border Protection (“Customs”) as possible importers.

² The Commission received one incomplete questionnaire from an importer of FCOJM from Costa Rica, ***. *** submitted responses to the importer questionnaire as a consignee or taking title to the product, to avoid double counting their data were not used because *** were the importers of record.

³ Brazil’s harvest season begins in July and U.S. imports of NFCOJ from Brazil have been heaviest between July and November. Petition, p. 95.

⁴ Petitioners’ postconference brief, p. 3.

⁵ It normally takes a tanker three weeks to travel from Brazil to the United States. These tankers can make 12 voyages (which translates to 96 million gallons) a year. Petition, p. 102. After the launching of Citrusuco’s new ships, Tropicana reportedly began putting pressure on Florida growers to renegotiate their contracts. Petition, p. 91.

⁶ Imports of FCOJM are from official statistics under the HTS statistical reporting number 2009.11.00.60. Imports of NFCOJ are from official statistics under the HTS subheadings 2009.19.25 (for 2001) and 2009.12.25 (for 2002/04). Some FCOJM and NFCOJ may be imported under HTS subheadings 2009.12.45 and 2009.19.00 which are basket categories, and therefore, imports may be somewhat understated.

⁷ The remainder comes from Belize, Costa Rica, Honduras, Mexico, South Africa and The Dominican Republic. The Caribbean, Central American, and Andean region countries benefit from preferential trade arrangements.

Table IV-1
Certain orange juice: U.S. imports, by sources, 2001/02-2003/04

Source	Crop year		
	2001/02	2002/03	2003/04
Quantity (1,000 gallons SSE)			
FCOJM:			
Brazil (subject)	***	***	***
Brazil (nonsubject) ¹	***	***	***
Other sources	73,140	58,708	62,603
Total	177,997	264,772	205,021
NFCOJ:			
Brazil	4,871	21,216	11,785
Other sources	2,419	881	1,564
Total	7,291	22,097	13,349
Total:			
Brazil (subject)	***	***	***
Brazil (nonsubject)	***	***	***
Other sources	75,559	59,589	64,167
Total	185,287	286,869	218,370
Value (1,000 dollars)²			
FCOJM:			
Brazil (subject)	***	***	***
Brazil (nonsubject)	***	***	***
Other sources	99,732	74,759	51,097
Total	190,073	280,468	178,455
NFCOJ:			
Brazil	8,822	36,550	15,344
Other sources	3,370	1,734	2,551
Total	12,192	38,285	17,895
Total:			
Brazil (subject)	***	***	***
Brazil (nonsubject)	***	***	***
Other sources	103,102	76,494	53,648
Total	202,265	318,753	196,350

Table continued on next page.

Table IV-1--Continued
Certain orange juice: U.S. imports, by sources, 2001/02-2003/04

Source	Crop year		
	2001/02	2002/03	2003/04
Unit value (per gallon)²			
FCOJM:			
Brazil (subject)	\$***	\$***	\$***
Brazil (nonsubject)	***	***	***
Other sources	1.36	1.27	0.82
Total	1.07	1.06	0.87
NFCOJ:			
Brazil	\$1.81	\$1.72	\$1.30
Other sources	1.39	1.97	1.63
Total	1.67	1.73	1.34
Total:			
Brazil (subject)	\$***	\$***	\$***
Brazil (nonsubject)	***	***	***
Other sources	1.36	1.28	0.84
Total	1.09	1.11	0.90
Share of quantity (percent)			
FCOJM:			
Brazil (subject)	***	***	***
Brazil (nonsubject)	***	***	***
Other sources	41.1	22.2	30.5
Total	100.0	100.0	100.0
NFCOJ:			
Brazil	66.8	96.0	88.3
Other sources	33.2	4.0	11.7
Total	100.0	100.0	100.0
Total:			
Brazil (subject)	***	***	***
Brazil (nonsubject)	***	***	***
Other sources	40.8	20.8	29.4
Total	100.0	100.0	100.0

Table continued on next page.

Table IV-1--Continued
Certain orange juice: U.S. imports, by sources, 2001/02-2003/04

Source	Crop year		
	2001/02	2002/03	2003/04
Share of value (percent)			
FCOJM:			
Brazil (subject)	***	***	***
Brazil (nonsubject)	***	***	***
Other sources	52.5	26.7	28.6
Total	100.0	100.0	100.0
NFCOJ:			
Brazil	72.4	95.5	85.7
Other sources	27.6	4.5	14.3
Total	100.0	100.0	100.0
Total:			
Brazil (subject)	***	***	***
Brazil (nonsubject)	***	***	***
Other sources	51.0	24.0	27.3
Total	100.0	100.0	100.0
¹ Includes data for imports by ***. ² Landed, duty-paid.			
Note.--Because of rounding, figures may not add to the totals shown.			
Source: Compiled from official Commerce statistics and responses to Commission questionnaires.			

APPARENT U.S. CONSUMPTION AND U.S. MARKET SHARES

The United States is the largest consumer of orange juice in the world.⁸ Data on apparent U.S. consumption of certain orange juice are presented in table IV-2. The quantity of total available orange juice for consumption fell 3.2 percent from 2001/02 to 2002/03, and then increased by 5.8 percent in 2003/04. U.S. consumption of certain orange juice may be adversely affected by rising consumption of bottled waters and soft drinks, and the popularity of low-carbohydrate diets.⁹ The quantity of the U.S. producers' market share decreased from 2001/2002 and then rose in 2003/2004.

RATIO OF SUBJECT IMPORTS TO U.S. PRODUCTION

Information concerning the ratio of subject imports to U.S. production of certain orange juice is presented in table IV-3. Imports from subject sources in Brazil were equivalent to *** percent of U.S. production during 2001/02, increased to *** percent during 2002/03, and then fell to *** percent in 2003/2004.

⁸ Petition, p. 77.

⁹ Petition, p. 80.

Table IV-2

Certain orange juice: Beginning stocks, U.S. production, U.S. imports, total supply, U.S. shipments, U.S. exports, ending stocks, apparent U.S. consumption, and market shares, 2001/02-2003/04

Item	Crop year		
	2001/02	2002/03	2003/04
<i>Quantity (1,000 gallons SSE)</i>			
FCOJM:			
Beginning stocks	692,065	659,957	696,560
U.S. production	842,442	638,889	869,753
Minus: U.S. exports	121,753	37,389	56,847
Minus: Ending stocks	659,957	696,560	797,625
Total domestic shipments	752,797	564,898	711,841
U.S. imports:			
Brazil (subject)	***	***	***
Brazil (nonsubject)	***	***	***
All other sources	73,140	58,708	62,603
Total imports	177,997	264,772	205,021
Total available	930,793	829,670	916,862
NFCOJ:			
Beginning stocks	0	0	0
U.S. production	532,007	579,008	581,339
Minus: U.S. exports	51,857	57,320	58,851
Minus: Ending stocks	0	0	0
Total domestic shipments	480,150	521,688	522,488
U.S. imports:			
Brazil (subject)	4,871	21,216	11,785
Brazil (nonsubject)	0	0	0
All other sources	2,419	881	1,564
Total imports	7,291	22,097	13,349
Total available	487,441	543,785	535,837
Total:			
Beginning stocks	692,065	659,957	696,560
U.S. production	1,374,449	1,217,897	1,451,092
Minus: U.S. exports	173,610	94,709	115,698
Minus: Ending stocks	659,957	696,560	797,625
Total domestic shipments	1,232,947	1,086,586	1,234,329
U.S. imports:			
Brazil (subject)	***	***	***
Brazil (nonsubject)	***	***	***
All other sources	75,559	59,589	64,167
Total imports	185,287	286,869	218,370
Total available	1,418,234	1,373,455	1,452,699

Table continued on next page.

Table IV-2--Continued

Certain orange juice: Beginning stocks, U.S. production, U.S. imports, total supply, U.S. shipments, U.S. exports, ending stocks, apparent U.S. consumption, and market shares, 2001/02-2003/04

Item	Crop year		
	2001/02	2002/03	2003/04
Shares (percent)			
FCOJM:			
U.S. domestic shipments	80.9	68.1	77.6
U.S. imports: Brazil (subject)	***	***	***
Brazil (nonsubject)	***	***	***
All other sources	7.9	7.1	6.8
Total imports	19.1	31.9	22.4
Total available	100.0	100.0	100.0
NFCOJ:			
U.S. domestic shipments	98.5	95.9	97.5
U.S. imports: Brazil (subject)	1.0	3.9	2.2
Brazil (nonsubject)	0.0	0.0	0.0
All other sources	0.5	0.2	0.3
Total imports	1.5	4.1	2.5
Total available	100.0	100.0	100.0
Total:			
U.S. domestic shipments	86.9	79.1	85.0
U.S. imports: Brazil (subject)	***	***	***
Brazil (nonsubject)	***	***	***
All other sources	5.3	4.3	4.4
Total imports	13.1	20.9	15.0
Total available	100.0	100.0	100.0
Source: Compiled from data submitted in response to Commission questionnaires, official Commerce statistics, and <i>PS&D Online</i> , FAS, USDA, November 2004.			

Table IV-3

Certain orange juice: Ratio of U.S. imports to U.S. production, by sources, 2001/02-2003/04

Item	Crop year		
	2001/02	2002/03	2003/04
Quantity (1,000 gallons SSE)			
U.S. production of FCOJM	842,442	638,889	869,753
U.S. production of NFCOJ	532,007	579,008	581,339
Total U.S. production	1,374,449	1,217,897	1,451,092
Ratio of U.S. imports to production (percent)			
FCOJM:			
Brazil (subject)	***	***	***
Brazil (nonsubject)	***	***	***
Nonsubject sources	8.7	9.2	7.2
All countries	21.1	41.4	23.6
NFCOJ:			
Brazil	0.9	3.7	2.0
Nonsubject sources	0.5	0.2	0.3
All countries	1.4	3.8	2.3
Total:			
Brazil (subject)	***	***	***
Brazil (nonsubject)	***	***	***
Nonsubject countries	5.5	4.9	4.4
All sources	13.5	23.6	15.0
Source: Compiled from data submitted in response to Commission questionnaires and official Commerce statistics.			

PART V: PRICING AND RELATED INFORMATION

FACTORS AFFECTING PRICES

Raw Materials

Raw materials, most of which are juice oranges, made up about 80 percent of the cost of goods sold of certain orange juice for domestic extractor/processors (excluding toll production) in 2003. Orange prices (delivered in) declined between crop year 2000/2001 and crop year 2003/2004 by 11 percent with the Florida orange crop increasing by 8 percent and the Brazilian orange crop has falling by 19 percent during the same period (figure V-1).

Transportation Costs to the U.S. Market

Transportation costs for certain orange juice from Brazil to the United States (excluding U.S. inland costs) in 2004 are estimated to be equivalent to approximately nine percent of the customs value for product from Brazil for FCOJM and 16 percent of the customs value for product from Brazil for NFCOJ. These estimates are derived from official import data and represent the transportation and other charges on imports valued on a c.i.f. basis, as compared with customs value.

U.S. Inland Transportation Costs

U.S. inland transportation costs for FCOJM ranged between 3 percent and 10 percent for U.S. extractor/processors and from 2 to 7 percent for importers and from 3 to 10 percent for NFCOJ.¹ All of the extractor/processors and importers who responded separately for wholesale sales of NFCOJ reported that no more than 50 percent of their sales were shipped more than 1,000 miles. All responding extractor/processors and importers who responded separately for wholesale sales of NFCOJ reported that all of their sales of NFCOJ were shipped over 1,000 miles to their customers.

Exchange Rates

Quarterly data reported by the International Monetary Fund for the Brazilian real from January 2001 through September 2004 for the nominal and real values of the currency are presented in figure V-2. The data show that while the nominal value of the real generally depreciated during the period examined, the real value fluctuated through the end of 2002.

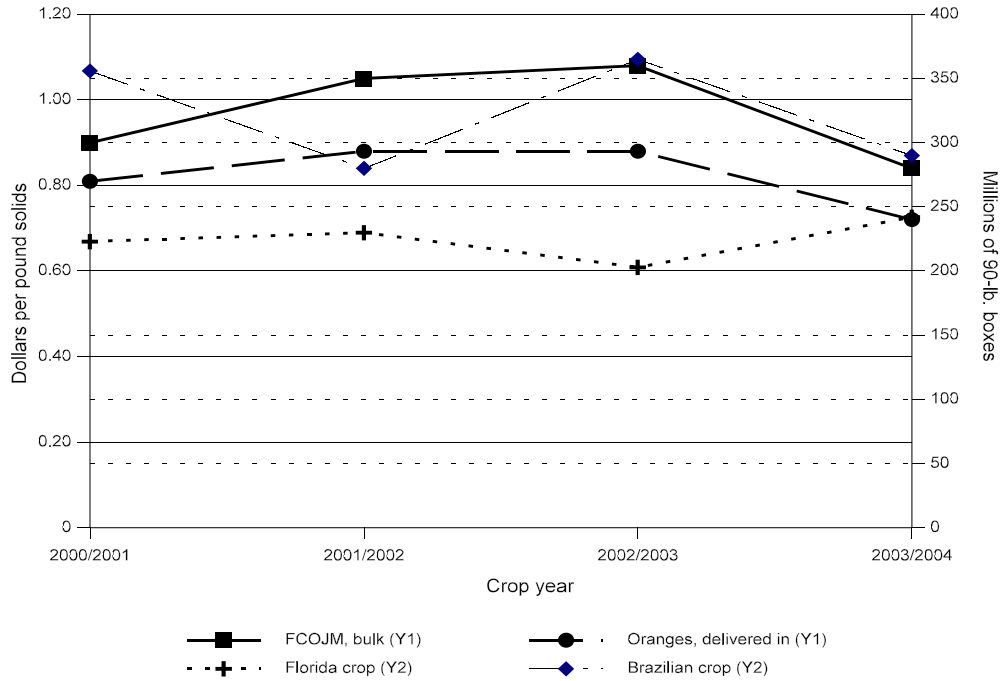
PRICING PRACTICES

Pricing Methods

Most extractor/processors and importers reported determining prices based on contracts and the price of FCOJM on the New York Board of Trade (“NYBOT”) futures market or transaction-by-transaction negotiation. Some extractor/processors and importers reported having a discount policy for select customers, usually those with large sales volumes.

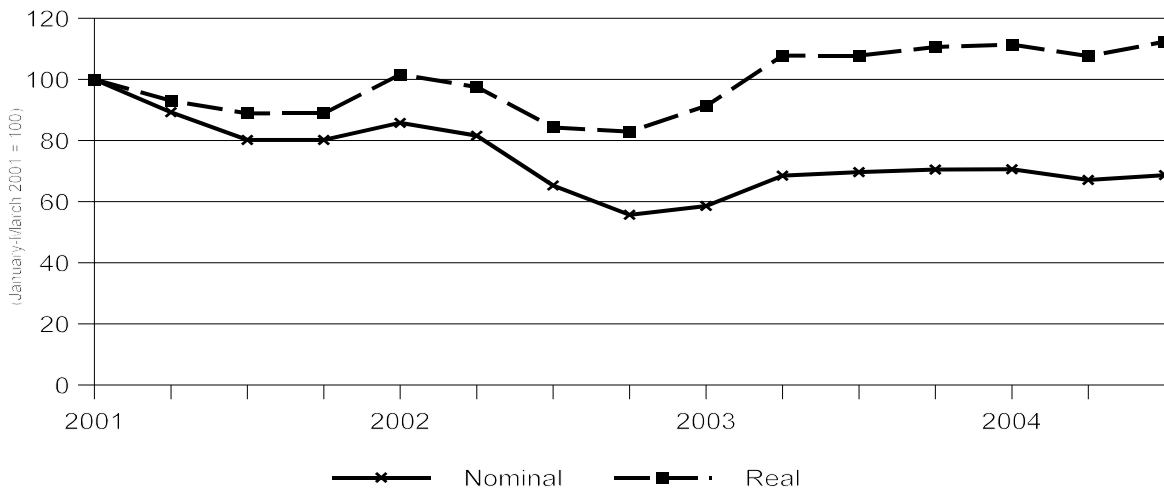
¹ ***.

Figure V-1
FCOJM and orange prices: Season average prices for FCOJM, bulk, delivered-in prices for oranges, and U.S. and Brazilian orange crop sizes.



Sources: Florida Citrus Mutual, Florida Citrus Processors Association, Florida Department of Citrus, Citrus Summary 2002-03, Feb. 2004 (FASS), Citrus Production Forecast, Jan. 12, 2005 (FASS), Brazil Citrus Annual Report 2004, Gain Report (FAS, USDA), Dec. 21, 2004 and previous releases.

Figure V-2
Exchange rates: Indices of the nominal and real exchange rates of the Brazilian real relative to the U.S. dollar, by quarters, January 2001-September 2004



Source: International Monetary Fund, *International Financial Statistics*, retrieved from <http://ifs.apdi.net/imf/about.asp> on December 22, 2004.

Extractor/processors and importers generally indicated that sales of FCOJM are mostly made on a short-term contract or spot basis, and sales of NFCOJ are always made on a long term or short term contract basis. Most extractor/processors reported short term contracts lasting anywhere from six months to one year, while one extractor/processor reported the length of short term contracts as quarterly and another reported contracts lasting one month. Long-term contracts ranged from one year to 20 years. Extractor/processors and all importers generally reported that they do not renegotiate prices during the contract period. Only one extractor/processor and one importer reported having meet-or-release provisions.

Although petitioners could not identify any price leaders in the U.S. market,² they indicated that Brazilian owned companies have market power in the U.S. market because of their greater volume of production, concentration of ownership, and dominance in world markets.³ Petitioners claimed that Brazil produces 83 percent of the world's orange juice exports and that four companies (Citrosuco NA, Cutrale, Louis Dreyfus, and Citrovita), control approximately 90 percent of Brazil's orange-crushing capacity and 100 percent of Brazil's bulk orange juice transportation system.⁴ Petitioners also claimed that although Brazil's 17 percent market share in 2003/2004 may not sound like much, Brazilian market shares have been as high as 40 percent in the past and have historically increased and decreased depending on how much juice was needed in the U.S. market.⁵ Respondents indicated that extractor/processors of FCOJM are price takers since market prices for FCOJM are set by supply and accumulated inventories, which they assert are beyond the control of processor extractors.⁶

PRICE DATA

The Commission requested U.S. extractor/processors and importers of FCOJM and NFCOJ to provide quarterly data for the total quantity and f.o.b. value of FCOJM and NFCOJ that was shipped to unrelated customers in the U.S. market.⁷ Data were requested for the period January 2001 to September 2004. The products for which pricing data were requested are as follows:

Product 1.—Frozen concentrated orange juice for manufacturing (FCOJM) of 65 degrees Brix and six or seven strength concentrate.

Product 2.— Single strength, not from concentrate, orange juice (NFCOJ) that is pasteurized by flash heating immediately after squeezing the fruit

Eight U.S. extractor/processors and five importers of certain orange juice from Brazil provided usable pricing data for sales of the requested products, although not all firms reported pricing for all products for all quarters.⁸ By quantity, pricing data reported by responding firms in crop year 2003/04

² Conference transcript, (Behr and Lucas) pp. 89-90.

³ Petitioners' postconference brief, p. 39.

⁴ Conference transcript, (Warlick), p. 41.

⁵ Conference transcript, (Warlick and McGrath), pp. 86-88 .

⁶ Cutrale/Dreyfus postconference brief, p. 8.

⁷ The Commission also requested U.S. extractor/processors and importers of certain orange juices to provide price data for spot sales and long-term contract sales separately. However, since several U.S. extractor/processors and importers indicated that they could not break out sales in this fashion and it is not clear how short-term contact sales were treated by all questionnaire respondents, price data are reported for all sales.

⁸ ***.

accounted for approximately 70 percent of U.S. extractor/processors' shipments of FCOJM and *** percent of U.S. extractor/processors' shipments of NFCOJ, and approximately 57 percent of U.S. shipments of subject imports from Brazil of FCOJM and almost *** percent of U.S. shipments of subject imports from Brazil of NFCOJ. The pricing data are presented in tables V-1 and V-2, and figure V-3.

Price Trends

Prices of domestic product continued to increase through the second quarter of 2004 while the price trends for subject imports from Brazil were mixed. The weighted-average sales prices of the U.S.-produced and Brazilian product 1 FCOJM increased by 12 and 33 percent respectively between the first quarter of 2001 than in the fourth quarter of 2002, and then fell by 26 and 35 percent respectively between the fourth quarter of 2002 and the second quarter of 2004, before increasing by 4 and 16 in the third quarter of 2004. The weighted-average sales price of the U.S.-produced product 2 (NFCOJ) fluctuated between the first quarter of 2001 and third quarter of 2004, increasing by *** percent. The weighted-average sales price of the Brazilian product 2 fluctuated between the third quarter of 2001 and the fourth quarter of 2003 decreasing by *** percent, and then fell by *** between the fourth quarter of 2001 and third quarter of 2004.

Price Comparisons

Overall there were 26 instances where prices for domestic certain orange juice and imported subject certain orange juice could be compared. Of these 26 comparisons, there were 12 instances (46 percent) where the subject imported product was priced below the domestic product. Margins of underselling averaged 4.1 percent, ranging from 0.2 percent to 14.7 percent. In 14 instances, the subject imported product was priced above the comparable domestic product. Margins of overselling averaged 21.3 percent, ranging from 1.0 percent to 38.0 percent.⁹

For product 1 (FCOJM) there were 15 instances where prices for domestic FCOJM and imported subject FCOJM could be compared. Of these 15 comparisons, there were 11 instances (73 percent) where the subject imported product was priced below the domestic product. Margins of underselling averaged 4.4 percent, ranging from 0.2 percent to 14.7 percent. In 4 instances, the subject imported product was priced above the comparable domestic product. Margins of overselling averaged 3.7 percent, ranging from 1.0 percent to 6.1 percent.

For product 2 (NFCOJ) there were 11 instances where prices for domestic NFCOJ and imported subject NFCOJ could be compared. Of these 10 comparisons, there was one instance (9 percent) where the subject imported product was priced below the domestic product by 0.6 percent. In 10 instances, the subject imported product was priced above the comparable domestic product. Margins of overselling averaged 28.3 percent, ranging from 12.4 percent to 38.0 percent.

Both petitioners and respondents indicated that the FCOJM prices are determined by orange juice futures prices¹⁰ and that U.S. inventories of certain orange juice are correlated with orange juice

⁹ The correlation coefficient between prices for domestic products 1 and 2 their corresponding subject Brazilian pricing products were 0.87 and 0.59, respectively. These correlation coefficients do not necessarily imply causation and these price trends may track one another for reasons having nothing to do with each other's prices, such as macroeconomic trends or prices of other substitute or downstream goods.

¹⁰ Petitioners' postconference brief, p. 38 and respondents Louis Dreyfus and Cutrale's postconference brief, pp. 4-5. In addition, petitioners claim that the futures price has a direct impact on the price of NFCOJ and the price of U.S. oranges for processing. Petitioners' postconference brief, p. 38.

Table V-1

Certain orange juice: Weighted-average f.o.b. prices and quantities of domestic and imported product 1,¹ and margins of underselling/(overselling), by quarters, January 2001-September 2004

Period	United States		Brazil		
	Price (per pound SE)	Quantity (pounds SE)	Price (per pound SE)	Quantity (pounds SE)	Margin (percent)
2001:					
January-March	\$0.94	127,659,485	\$0.80	14,786,650	14.7
April-June	0.87	126,054,398	0.89	17,410,217	(2.4)
July-September	0.90	179,783,854	0.95	12,970,312	(5.4)
October-December	0.95	139,702,103	0.88	20,835,582	7.5
2002:					
January-March	0.99	166,076,652	0.94	7,483,375	4.7
April-June	0.98	237,080,422	0.98	13,831,967	0.2
July-September	1.04	114,838,814	1.03	13,916,038	0.5
October-December	1.05	110,582,277	1.06	25,711,643	(1.0)
2003:					
January-March	1.01	127,766,325	0.99	48,385,624	2.6
April-June	1.03	134,980,178	1.01	25,788,588	1.4
July-September	0.99	125,318,606	0.98	24,021,375	1.3
October-December	0.90	145,389,142	0.95	26,586,326	(6.1)
2004:					
January-March	0.88	141,796,752	0.85	20,647,709	3.6
April-June	0.77	182,088,192	0.69	33,443,557	10.7
July-September	0.81	115,719,460	0.80	22,333,293	0.8
¹ Frozen concentrated orange juice for manufacturing (FCOJM) of 65 degrees Brix and six or seven strength concentrate.					
Source: Compiled from data submitted in response to Commission questionnaires.					

futures prices.¹¹ However, petitioners asserted that U.S. inventories did not cause futures prices to fall, but that low orange juice futures prices caused U.S. inventories to rise because U.S. extractor/processors could not cover costs due to low wholesale prices for certain orange juice, and that with the greater volume of production, concentration of ownership, and dominance of Brazilian extractor/processors in world markets, Brazilian production has a greater impact on futures prices than U.S. production¹²

¹¹ Petitioners' postconference brief, p. 38 and Cutrale/Dreyfus postconference brief, p 8 and exhibit 2.

¹² Petitioners' postconference brief, pp. 38-39.

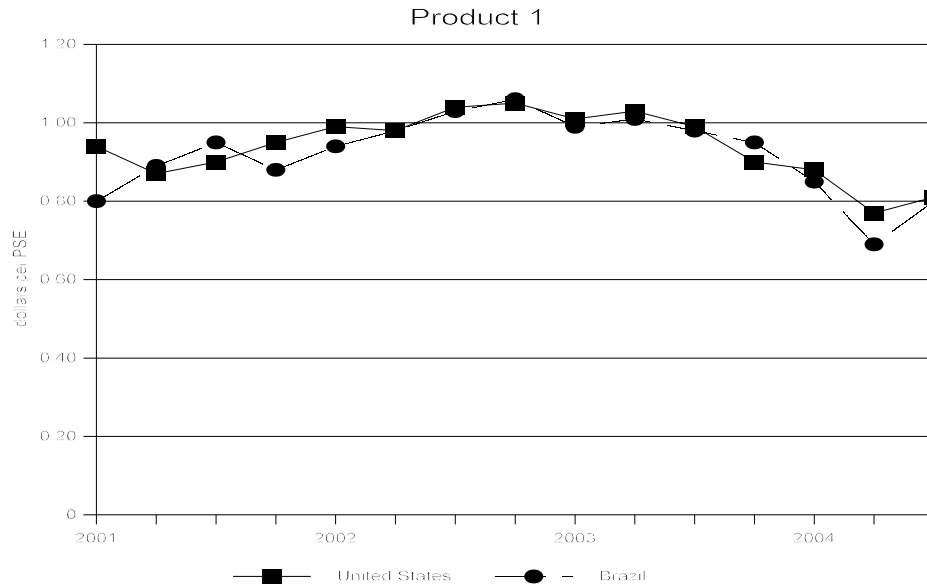
Table V-2

Certain orange juice: Weighted-average f.o.b. prices and quantities of domestic and imported product 2, and margins of underselling/(overselling), by quarters, January 2001-September 2004

* * * * *

Figure V-3

Certain orange juice: Weighted-average f.o.b. prices of domestic and imported products 1 and 2, by quarters, January 2001-September 2004



Product 2

* * * * *

Source: Tables V-1 to V-2.

Respondents asserted that the principal factors determining the price of certain orange juice are the size of the Florida orange crop and the amount of FCOJM held in inventory and that a decline in domestic consumption between 2000 and 2003 also lowered domestic prices.¹³ Using quarterly data from the first quarter of 1994 to the third quarter of 2004, respondents claimed that orange juice futures prices are negatively correlated with Florida orange crop reports and inventories, positively correlated with the size of the U.S. market, and not correlated with certain orange juice imports from Brazil.¹⁴

Figure V-4 compares the prices of U.S.-produced products 1 and 2, the orange juice futures price, and Florida and Brazilian crop estimates.¹⁵ Correlation coefficients between the price of U.S.-produced product 1 and 2 and the orange juice futures prices were 0.86 and 0.36 respectively, while correlation coefficients between the two pricing products and the Florida crop report were and -0.73 and -0.50, respectively, and 0.45 and 0.56, respectively for the Brazilian crop report.

LOST SALES AND LOST REVENUES

The Commission requested U.S. extractor/processors of certain orange juice to report any instances of lost sales or revenues they experienced due to competition from imports of certain orange juice from Brazil since January 2001. The petitioners provided no usable and/or verifiable lost revenue or lost sales allegations in the petition.¹⁶ Two responding nonpetitioning extractor/processors reported that ***. The *** usable lost sales allegations totaled over \$*** for *** of certain orange juice. Staff contacted the *** named in these allegations and a summary of the information obtained follows (table V-3).

*** indicated that he disagreed the allegation involving ***. He indicated that in ***.¹⁷

He also indicated that he has no background on the lost sale allegation involving ***, although he indicated that he knows that the rejected U.S. price and accepted import price are not correct.¹⁸

¹³ Cutrale/Dreyfus postconference brief, pp. 1, 30-31.

¹⁴ Ibid., exhibit 2. The correlation coefficients between the orange juice futures price and Florida crop reports, inventories, the size of the U.S. market and imports of certain orange juice imports from Brazil were -0.478, -0.622, 0.052, and 0.058 respectively. Ibid., exhibit 2, table 2. Respondents calculated the reported Florida orange crop as the average Florida round orange crop report for the months during a quarter that reports are made (reports are made from October to July each year). Respondents calculated inventories as end of a quarter inventories divided by the average inventory for that quarter. Ibid., exhibit 2, table 1.

Respondent also attempted to estimate the impact of Brazilian imports on the orange juice futures price, but claim that to truly be able to identify the independent effects of Brazilian imports and other factors, simultaneity between inventories, the Florida crop report, Brazilian imports and other factors would have to be carefully specified and the sample data should be extended at least 10 years so that crop size changes of the 1980s could be taken into account. Ibid., exhibit 2, p. 26.

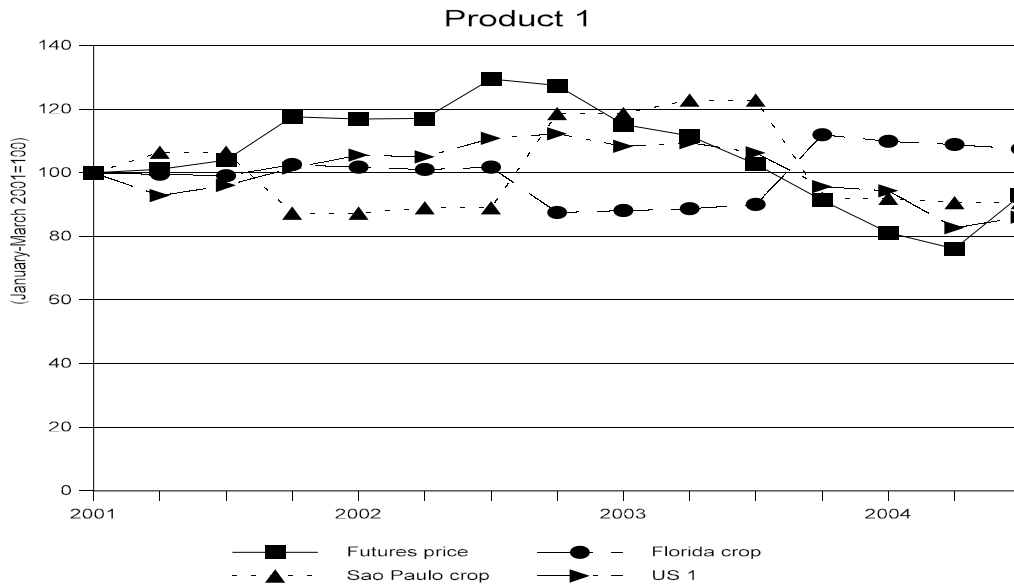
¹⁵ Quarterly values of the U.S. crop report were based on averages of monthly estimates of the current annual crop published by USDA from October through July. Quarterly value of the Sao Paulo crop report were based on estimates of the current annual crop published biannually. The second and third quarter values are based on estimates published in either June or July while values for the fourth and first quarter are based on estimates published in either November or December.

¹⁶ ***.

¹⁷ Staff telephone interview with ***.

¹⁸ Staff telephone interview with ***.

Figure V-4
Certain orange juice: Price indices of weighted-average f.o.b. prices of domestic products 1 and 2, the average orange juice futures price, average USDA Florida crop report, and average Sao Paulo crop report, by quarters, January 2001-September 2004



* * * * *

Sources: Tables V-1 to V-2; USDA, Citrus Production Forecast,(FASS), various issues, Foreign Agricultural Service, Attache Reports, various issues, and NYBOT.

Table V-3
Certain orange juice: U.S. extractor/processors' lost sales allegations

* * * * *

PART VI: FINANCIAL CONDITION OF U.S. PRODUCERS

BACKGROUND

Ten extractor/processors¹ provided useable financial results for their toll and non-toll operations processing FCOJM and NFCOJ. These firms² are believed to account for a majority of the domestic industry's processing volume during 2004. *** was the *** to report internal consumption of FCOJM (*** percent in terms of sales value in 2004) and *** was the *** to report transfers to related firms of FCOJM (*** percent in terms of sales value in 2004). No internal consumption and related transfers were reported for NFCOJ.³

OPERATIONS ON CERTAIN ORANGE JUICE EXTRACTOR/PROCESSORS

Results of operations of U.S. extractor/processors on their orange juice operations (both FCOJM and NFCOJ) are presented in table VI-1, which includes data on a per-pound basis as well as operating income (loss) to net sales ratios. Aggregate income-and-loss data for extractor/processors on their FCOJM processing operations are presented in table VI-2, while those data on NFCOJ are separately shown in table VI-3. Results of toll processing operations of two tollers, ***, are presented in table VI-7. Combined results of the U.S. extractor/processors (both toll and non-toll processing operations for FCOJM and NFCOJ) are presented in table VI-9. Combined results of the U.S. extractor/processors (both toll and non-toll processing operations for FCOJM are presented in table VI-10 and for NFCOJ are presented in table VI-11.

The financial results of U.S. extractor/processors on their certain orange juice operations fluctuated from 2002 to 2004 (table VI-1). The quantity sold, net sales value, and operating income all decreased from 2002 to 2003. While sales quantity increased slightly from 2003 to 2004, sales value decreased and operating income decreased substantially during the same period, due mainly to a substantial decrease in the per-pound selling price (from \$1.10 to \$0.98 per pound). While sales quantity increased somewhat from interim 2003 to interim 2004, both sales value and operating income decreased during the same period, again, due primarily to a substantial decrease in the per-pound selling price (from \$1.09 to \$0.95 per pound) between interim 2003 and interim 2004. While sales quantity and value on FCOJM (table VI-2) fluctuated between 2002 and 2004, operating income decreased continuously during the same period, and changed to the operating losses in 2003 and 2004. Between the two interim periods, both sales quantity and value increased while the operating loss got even bigger. On the other hand, the financial results on NFCOJ operations (table VI-3) are different from results of operations on FCOJM operations, with increased sales quantity, value and operating income from 2002 to 2003 and decreased sales quantity, value, and operating income from 2003 to 2004. Between interim 2003 and interim 2004, both sales quantity and value on NFCOJ decreased somewhat while operating income decreased slightly for the same period. While the per-pound average selling price and per-pound total cost for NFCOJ were consistently higher compared to those for FCOJM for all periods, operating income and per-pound profitability for NFCOJ were much higher than that for FCOJM.

¹ The producers and their fiscal year ends are as follows: ***, ***, *** response did not contain any financial information/data.

² ***.

³ There are discrepancies between the quantity and value of internal consumption reported in Part III and Part VI of this report. Staff was unable to gather data from affected firms to resolve those discrepancies during this preliminary phase investigation.

Table VI-1

Certain orange juice: Results of operations of U.S. extractor/processors on combined FCOJM and NFCOJ, fiscal years 2002-04, January-September 2003, and January-September 2004

Item	Fiscal year			January-September	
	2002	2003	2004	2003	2004
	Quantity (1,000 pounds)				
Net sales	702,316	626,538	697,608	517,535	588,229
	Value (\$1,000)				
Net sales ¹	737,560	686,323	685,635	566,558	558,165
COGS	682,694	633,369	658,141	538,950	536,392
Gross profit	54,866	52,954	27,494	27,608	21,773
SG&A expenses	27,049	28,004	28,780	21,589	24,676
Operating income	27,817	24,950	(1,286)	6,019	(2,903)
Interest expense	15,871	14,216	15,503	12,692	10,328
Other expense	3,181	2,712	3,524	1,333	4,505
Dumping/subsidy funds	0	0	0	0	0
Other income	1,814	8,667	1,731	6,682	1,431
Net income (loss)	10,579	16,689	(18,582)	(1,324)	(16,305)
Depreciation/amortization	17,471	16,932	18,575	14,289	14,851
Cash flow	28,050	33,621	(7)	12,965	(1,454)
	Value (per pound)				
Net sales	\$1.05	\$1.10	\$0.98	\$1.09	\$0.95
COGS	0.97	1.01	0.94	1.04	0.91
Gross profit	0.08	0.08	0.04	0.05	0.04
SG&A expenses	0.04	0.04	0.04	0.04	0.04
Operating income (loss)	0.04	0.04	0.00	0.01	0.00
	Ratio to net sales (percent)				
COGS	92.6	92.3	96.0	95.1	96.1
Gross profit	7.4	7.7	4.0	4.9	3.9
SG&A expenses	3.7	4.1	4.2	3.8	4.4
Operating income (loss)	3.8	3.6	(0.2)	1.1	(0.5)
	Number of firms reporting				
Operating losses	2	3	6	4	6
Data	10	10	10	10	10
<p>¹ Internal consumption/related transfers are less than *** percent of the combined companies' net sales value in 2004 and are not shown separately.</p>					
<p>Source: Compiled from data submitted in response to Commission questionnaires.</p>					

Table VI-2

FCOJM: Results of operations of U.S. extractor/processors, fiscal years 2002-04, January-September 2003, and January-September 2004

Item	Fiscal year			January-September	
	2002	2003	2004	2003	2004
	Quantity (1,000 pounds)				
Net sales	600,311	496,224	587,269	420,240	500,896
	Value (\$1,000)				
Net sales ¹	604,313	513,879	541,149	437,534	447,904
COGS	576,064	495,001	543,068	431,730	447,843
Gross profit	28,249	18,878	(1,919)	5,804	61
SG&A expenses	21,373	19,954	21,358	15,632	18,405
Operating income (loss)	6,876	(1,076)	(23,277)	(9,828)	(18,344)
Interest expense	12,794	10,058	12,254	9,579	7,879
Other expense	2,308	1,309	2,587	752	4,076
Dumping/subsidy funds	0	0	0	0	0
Other income	1,607	8,407	1,577	6,438	1,328
Net income (loss)	(6,619)	(4,036)	(36,541)	(13,721)	(28,971)
Depreciation/amortization	14,106	11,498	14,219	10,256	12,017
Cash flow	7,487	7,462	(22,322)	(3,465)	(16,954)
	Value (per pound)				
Net sales	\$1.01	\$1.04	\$0.92	\$1.04	\$0.89
COGS	0.96	1.00	0.92	1.03	0.89
Gross profit	0.05	0.04	0.00	0.01	0.00
SG&A expenses	0.04	0.04	0.04	0.04	0.04
Operating income (loss)	0.01	0.00	(0.04)	(0.02)	(0.04)
	Ratio to net sales (percent)				
COGS	95.3	96.3	100.4	98.7	100.0
Gross profit	4.7	3.7	(0.4)	1.3	0.0
SG&A expenses	3.5	3.9	3.9	3.6	4.1
Operating income (loss)	1.1	(0.2)	(4.3)	(2.2)	(4.1)
	Number of firms reporting				
Operating losses	2	5	6	5	6
Data	9	9	9	9	9
<p>¹ Internal consumption/related transfers are less than *** percent of the combined companies' net sales quantity and value in 2004 and are not shown separately.</p>					
<p>Source: Compiled from data submitted in response to Commission questionnaires.</p>					

Table VI-3

NFCOJ: Results of operations of U.S. extractor/processors, fiscal years 2002-04, January-September 2003, and January-September 2004

Item	Fiscal year			January-September	
	2002	2003	2004	2003	2004
	Quantity (1,000 pounds)				
Net sales	102,005	130,314	110,339	97,295	87,333
	Value (\$1,000)				
Net sales ¹	133,247	172,444	144,486	129,024	110,261
COGS	106,630	138,368	115,073	107,220	88,549
Gross profit	26,617	34,076	29,413	21,804	21,712
SG&A expenses	5,676	8,050	7,422	5,957	6,271
Operating income	20,941	26,026	21,991	15,847	15,441
Interest expense	3,077	4,158	3,249	3,113	2,449
Other expense	873	1,403	937	581	429
Dumping/subsidy funds	0	0	0	0	0
Other income	207	260	154	244	103
Net income	17,198	20,725	17,959	12,397	12,666
Depreciation/amortization	3,365	5,434	4,356	4,033	2,834
Cash flow	20,563	26,159	22,315	16,430	15,500
	Value (per pound)				
Net sales	\$1.31	\$1.32	\$1.31	\$1.33	\$1.26
COGS	1.05	1.06	1.04	1.10	1.01
Gross profit	0.26	0.26	0.27	0.22	0.25
SG&A expenses	0.06	0.06	0.07	0.06	0.07
Operating income (loss)	0.21	0.20	0.20	0.16	0.18
	Ratio to net sales (percent)				
COGS	80.0	80.2	79.6	83.1	80.3
Gross profit	20.0	19.8	20.4	16.9	19.7
SG&A expenses	4.3	4.7	5.1	4.6	5.7
Operating income (loss)	15.7	15.1	15.2	12.3	14.0
	Number of firms reporting				
Operating losses	***	***	***	***	***
Data	6	6	6	6	6
<p>¹ No internal consumption/related transfers were reported in all periods and are not presented here.</p> <p>Source: Compiled from data submitted in response to Commission questionnaires.</p>					

Selected financial data, by firm, are presented in table VI-4. *** extractor/processors, ***, experienced operating income for all periods for which data were collected, while *** incurred operating losses for all periods. *** also experienced *** operating losses for most periods. With the exception of ***, all extractor/processors suffered declining profitability (in terms of dollar amount of operating income) from 2003 to 2004. *** extractor/processors, *** showed improved profitability from interim 2003 to interim 2004.

Table VI-4

Certain orange juice: Results of operations of U.S. extractor/processors, by firm, fiscal years 2002-04, January-September 2003, and January-September 2004

* * * * *

Selected aggregate per-pound cost data of the extractor/processors on their certain orange juice operations, i.e., cost of goods sold (“COGS”) and selling, general, and administrative (“SG&A”) expenses, are presented in table VI-5. Raw material costs, especially U.S. fresh oranges, increased from 2002 to 2003, and decreased from 2003 to 2004 and from interim 2003 to interim 2004 which resulted in lower COGS and total cost which included SG&A expenses) per pound during the same periods.

Table VI-5

Certain orange juice: Per-pound costs of U.S. extractor/processors, fiscal years 2002-04, January-September 2003, and January-September 2004

Item	Fiscal year			January-September	
	2002	2003	2004	2003	2004
COGS:	<i>Value (per pound)</i>				
U.S. fresh oranges	\$0.68	\$0.72	\$0.69	\$0.70	\$0.66
Purchased U.S. oranges	0.07	0.07	0.06	0.11	0.06
Brazilian orange solids	0.07	0.06	0.02	0.06	0.02
Other imported oranges	0.00	0.00	0.00	0.00	0.00
Other raw materials	0.00	0.01	0.01	0.00	0.01
Total raw materials	0.83	0.85	0.78	0.88	0.76
Direct labor	0.03	0.03	0.03	0.04	0.03
Factory overhead	0.11	0.13	0.13	0.12	0.12
Total COGS	0.97	1.01	0.94	1.04	0.91
SG&A expenses:					
Selling expenses	0.01	0.01	0.01	0.01	0.01
G&A expenses	0.03	0.03	0.03	0.03	0.03
Total SG&A expenses	0.04	0.04	0.04	0.04	0.04
Total cost	1.01	1.06	0.98	1.08	0.95

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

A variance analysis showing the effects of prices and volume on U.S. extractor/processors' sales of certain orange juice, and of costs and volume on their total cost, is shown in table VI-6. The analysis is summarized at the bottom of the table. The analysis indicates that the decrease in operating income (\$29.1 million) between 2002 and 2004 was attributable mainly to the negative effects of decreased price (\$47.0 million) and lower sales volume (\$0.2 million) which was offset to some extent by the positive effect of decreased costs/expenses (\$18.1 million).

Table VI-6
Certain orange juice: Variance analysis of operations of U.S. extractor/processors on FCOJM and NFCOJ, fiscal years 2002-04, January-September 2003, and January-September 2004

Item	Period changes			January-September
	2002-04	2002-03	2003-04	2003-04
	Value (\$1,000)			
Net sales:				
Price variance	(46,981)	28,344	(78,540)	(85,783)
Volume variance	(4,944)	(79,581)	77,852	77,390
Total net sales variance	(51,925)	(51,237)	(688)	(8,393)
Cost of sales:				
Cost variance	19,977	(24,336)	47,073	76,177
Volume variance	4,576	73,661	(71,845)	(73,619)
Total cost variance	24,553	49,325	(24,772)	2,558
Gross profit variance	(27,372)	(1,912)	(25,460)	(5,835)
SG&A expenses:				
Expense variance	(1,912)	(3,874)	2,401	(138)
Volume variance	181	2,919	(3,177)	(2,949)
Total SG&A variance	(1,731)	(955)	(776)	(3,087)
Operating income variance	(29,103)	(2,867)	(26,236)	(8,922)
Summarized as:				
Price variance	(46,981)	28,344	(78,540)	(85,783)
Net cost/expense variance	18,064	(28,209)	49,473	76,039
Net volume variance	(186)	(3,001)	2,830	822
Note.--Unfavorable variances are shown in parentheses; all others are favorable. The data are comparable to changes in operating income as presented in table VI-1. Source: Compiled from data submitted in response to Commission questionnaires.				

In addition to the non-toll processing operations of domestic extractor/processors, there is some amount of toll processing done by *** extractor/processors, ***. Based on questionnaire responses, toll processing accounted for approximately *** percent of the total combined value of FCOJM and NFCOJ processed in 2004 (*** percent for FCOJM only and *** percent for NFCOJ only in 2004), and again, approximately *** percent of total value of FCOJM and NFCOJ processed during the January-September 2004 time period. *** toll processed for *** and *** toll processed for ***. Neither *** provided revenue and cost data relating to the sale of the processed FCOJM and NFCOJ to other parties.

In toll processing, the firm that owns the oranges or orange solids (the tollee) arranges for unrelated extractor/processors (the tollers) to process the oranges or orange solids for a fee, and then the tollee arranges for the final sale of the FCOJM and NFCOJ to other parties. Aggregate income-and-loss data for *** extractor/processors (tollers) on their toll processing operations are presented in table VI-7. Selected financial data for *** tollers, by firm, are presented in table VI-8. The results are in contrast to the non-toll results contained in tables VI-1, VI-2, and VI-3. Even though the quantity and value of the toll processing operations decreased over the entire period for which data were collected (except for a minor increase of sales value from 2003 to 2004), operating income increased from 2003 to 2004 and from interim 2003 to interim 2004, because the toll processing fee received per-pound increased while the toll processing cost per-pound decreased during these periods.

Table VI-7
Certain orange juice: Results of extractor/processors on their toll processing operations, fiscal years 2002-04, January-September 2003, and January-September 2004

* * * * *

Table VI-8
Certain orange juice: Results of extractor/processors on their toll processing operations (both FCOJM and NFCOJ), by firm, fiscal years 2002-04, January-September 2003, and January-September 2004

* * * * *

The differences between the two types of extractor/processors (non-toll and toll) become evident when the financial results of the two types of extractor/processors are reviewed. Using 2004 data as an example, the unit sales revenue reported by non-toll extractor/processors is \$*** per pound for both FCOJM and NFCOJ. The costs include the cost of the oranges or orange solids (\$*** per pound), the costs of processing (\$*** per pound), and selling and administrative costs (\$*** per pound). These are in contrast to the financial results reported by toll extractor/processors, where the revenues are the processing fees (*** per pound), while the costs are processing costs (*** per pound), and SG&A expenses (*** per pound). Combined results of the U.S. extractor/processors (both toll and non-toll operations for FCOJM and NFCOJ) are presented in table VI-9. Combined results of the U.S. extractor/processors (both toll and non-toll operations) for FCOJM are shown in table VI-10, while combined results of the U.S. extractor/processors (both toll and non-toll operations) for NFCOJ are shown in table VI-11. The trends on combined operations are similar to those of non-toll operations on FCOJM and NFCOJ because approximately *** percent of sales revenues were derived from non-toll processing operations. The quantity sold, net sales value, and operating income all decreased from 2002 to 2003. While sales quantity increased from 2003 to 2004, sales value and operating income decreased during the same period, due to a decrease in the per-pound selling price (from \$*** to \$*** per pound). While the sales quantity increased somewhat from interim 2003 to interim 2004, both sales value and operating income decreased during the same period, again, due to a decrease in per-pound sales revenue (from \$*** to \$*** per pound) between interim 2003 and interim 2004.

Table VI-9

Certain orange juice: Results of extractor/processors on their combined (FCOJM and NFCOJ) toll and non-toll processing operations, fiscal years 2002-04, January-September 2003, and January-September 2004

* * * * *

Table VI-10

FCOJM: Results of extractor/processors on toll and non-toll operations, fiscal years 2002-04, January-September 2003, and January-September 2004

* * * * *

Table VI-11

NFCOJ: Results of extractor/processors on toll and non-toll operations, fiscal years 2002-04, January-September 2003, and January-September 2004

* * * * *

CAPITAL EXPENDITURES AND RESEARCH AND DEVELOPMENT EXPENSES

The responding firms' aggregate data on capital expenditures and research and development ("R&D") expenses are presented in table VI-12. *** had *** expenditures during the period for which data were collected and *** had *** amounts of expenditures during most periods. *** reported R&D expenses. Capital expenditures, by firm, are presented in table VI-13. Capital expenditures increased in 2003 compared to 2002 and then decreased in 2004. R&D expenses increased from 2002 to 2003 and decreased in 2004. Both capital expenditures and R&D expenses decreased from interim 2003 to interim 2004.

Table VI-12

Certain orange juice: Capital expenditures and R&D expenses by U.S. extractor/processors, fiscal years 2002-04, January-September 2003, and January-September 2004

Item	Fiscal year			January-September	
	2002	2003	2004	2003	2004
	Value (\$1,000)				
Capital expenditures¹					
FCOJM	14,414	9,053	11,658	7,346	10,403
NFCOJ	20,167	28,716	8,761	19,532	6,032
Total	34,581	37,769	20,419	26,878	16,435
R&D expenses²					
FCOJM	***	***	***	***	***
NFCOJ	***	***	***	***	***
Total	112	179	155	147	114
¹ *** reported capital expenditures. ² *** reported R&D expenses.					
Source: Compiled from data submitted in response to Commission questionnaires.					

Table VI-13

Certain orange juice: Capital expenditures by U.S. extractor/processors, by firms, fiscal years 2002-04, January-September 2003, and January-September 2004

* * * * *

ASSETS AND RETURN ON INVESTMENT

U.S. extractor/processors were requested to provide data on their assets used in the production and sales of orange juice during the period for which data were collected to assess their return on investment (“ROI”). Although ROI can be computed in different ways, a commonly used method is income earned during the period divided by the total assets utilized for the operations. For purposes of this report, ROI is calculated as operating income divided by total assets used in the production and sales of certain orange juice. Data on the U.S. extractor/processors’ total assets and their ROI are presented in table VI-14.

The value of total assets increased steadily from 2002 to 2004 while the ROI decreased over the same period since operating income decreased continuously as well. The trend of ROI over the period was the same as the trend of the operating income margin to net sales in table VI-1 over the same period.

In order to put the foregoing data into perspective, table VI-15 presents a computed ROI for North American Industry Classification System (“NAICS”) code 311411 (frozen fruit, juice, and vegetable manufacturing), based on data contained in the Risk Management Association (“RMA”)’s Annual Statement Studies, Financial Ratio Benchmarks, 2004-05, NAICS 311411, which covers Standard Industrial Classification (“SIC”) code 2037. Even though the RMA Financial Ratio Benchmarks for NAICS 311411 are presented, it should be noted that exact comparisons between the questionnaire data and the RMA data are not advised, primarily due to the fact that there are no exact NAICS or SIC codes available for orange juice. While the questionnaire data strictly relate to certain orange juice, the RMA data include data on other products and may or may not actually reflect financial ratios for certain orange juice. While the questionnaire data for three fiscal years (2002 to 2004) consist of the data from ten firms with an aggregate sales value of \$737 million in 2004, the RMA data for the twelve-month period ending March 31, 2004 are for 48 companies with an aggregate sales value of approximately \$3.5 billion.

Table VI-14

Certain orange juice: Value of assets and return on investment of U.S. extractor/processors, fiscal years 2002-04

Item	Fiscal year		
	2002	2003	2004
Value of assets	Value (\$1,000)		
1. Current assets:			
A. Cash and equivalents	3,166	8,111	13,348
B. Trade receivables (net)	81,968	67,753	78,201
C. Inventories	304,174	412,354	401,797
D. All other current	22,191	19,077	20,974
Total current	411,499	507,295	514,320
2. Non-current assets:			
A. Fixed assets (cost)	724,460	760,924	789,662
B. Fixed assets (net)	486,271	487,831	480,437
C. Other non-current	6,832	6,249	9,431
Total non-current	493,103	494,080	489,868
Total assets	904,602	1,001,375	1,004,188
	Value (\$1,000)		
Operating income (loss)	27,817	24,950	(1,286)
	Ratio of operating income to total assets (percent)		
Return on investment	3.1	2.5	(0.1)
Source: Compiled from data submitted in response to Commission questionnaires.			

Table VI-15

The Risk Management Association data on the number of firms and their sales, operating margins, total assets, and return on investment on their operations for NAICS 311411 (SIC code 2037) (frozen fruit, juice, and vegetable manufacturing), for the five one-year periods ending March 31, 2004

Item	One-year periods ending on March 31				
	2000	2001	2002	2003	2004
	Value (\$1,000)				
Number of companies	63	44	43	39	48
Sales value	\$3,217,862	\$3,079,261	\$2,492,387	\$1,969,905	\$3,493,103
Asset value	2,376,453	2,282,009	1,846,835	1,285,990	2,213,412
Operating margin (<i>percent</i>)	5.4	4.3	3.0	3.2	4.2
	Ratio of operating income (loss) to assets (<i>percent</i>)				
Return on investment ¹	7.3	5.8	4.0	4.9	6.6
<p>¹ Calculated based on sales value, asset value, and operating margin above.</p> <p>Source: Annual Statement Studies: Financial Ratio Benchmarks, 2004-2005 by the Risk Management Association (RMA). Permission to use the data granted by RMA.</p> <p>© "2004" by RMA- The Risk Management Association. All rights reserved. No part of this table may be reproduced or utilized in any form or by any means, electronic or mechanical, including photocopying, recording or by any information storage and retrieval system without permission in writing from RMA - The Risk Management Association. Please refer to www.rmahq.org for further warranty, copyright and use of data information.</p>					

OPERATIONS ON ORANGE GROWERS

Results of operations of 19 U.S. growers are presented in table VI-16.⁴ Due to the extremely small number of responses by U.S. growers compared to a universe of over 10,000 domestic growers, the financial results of 19 growers may be representative of the results of operations for U.S. orange growers as a whole. While the quantity of oranges sold increased continuously from 2002 to 2004, net sales value and both operating and net income increased from 2002 to 2003, but then decreased from 2003 to 2004. The average unit selling price per box followed the same pattern, increasing from 2002 to 2003 and then decreasing from 2003 to 2004. The average unit growing and operating expenses decreased continuously between 2002 and 2004.

GROWERS' CAPITAL EXPENDITURES AND RESEARCH AND DEVELOPMENT EXPENSES

The responding growers' aggregate data on capital expenditures and R&D expenses are shown in table VI-17. Capital expenditures decreased in 2003 compared to 2002 and then increased in 2004. R&D expenses which were reported by *** increased from 2002 to 2004.

⁴ Although a total 32 growers submitted questionnaire responses, 13 responses either contained no financial data or were significantly incomplete to be utilized.

Table VI-16

Oranges: Results of operations of U.S. growers, fiscal years 2002-04

Item	Fiscal year		
	2002	2003	2004
	Quantity (1,000 boxes)		
Net sales	91,258	94,623	105,312
	Value (\$1,000)		
Net sales	410,898	447,232	411,818
Growing/Op. Expenses:			
Hired labor	20,462	21,807	30,312
Pick & haul	153,849	147,309	158,250
Replanting, pruning	6,274	13,140	7,769
Planting on new land	0	0	0
Fertilizers, chemicals	70,502	73,285	68,806
Materials, supplies	5,611	7,504	4,772
Repairs, maintenance	3,356	3,957	3,515
Gasoline, fuel	2,997	3,725	3,511
Water, electricity	14,005	10,434	8,927
Selling, marketing expenses	75	76	79
Shipping expenses	1	1	1
Officer/partner salaries	1,395	1,583	1,569
Office expenses, other salar.	1,370	1,457	1,428
Depreciation/amortization	12,232	11,320	10,674
All other expenses	95,494	83,925	80,108
Total expenses	387,623	379,523	379,721
Operating income	23,275	67,709	32,097
Interest expense	1,125	844	591
Other expense	7,002	(2,611)	2,595
Net income	15,148	69,476	28,911
Net gain (loss) on futures	0	0	0
	Value (per box)		
Net sales	\$4.50	\$4.73	\$3.91
Growing/Op. Expenses	4.25	4.01	3.61
Operating income	0.26	0.72	0.30
Net income	0.17	0.73	0.27
	Ratio to net sales (percent)		
Growing/Op. Expenses	94.3	84.9	92.2
Operating income	5.7	15.1	7.8
Net income	3.7	15.5	7.0
	Number of firms reporting		
Operating losses	7	6	7
Net losses	7	5	8
Data	19	19	19

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

Table VI-17**Certain orange juice: Capital expenditures and R&D expenses by U.S. growers, fiscal years 2002-04**

Item	Fiscal year		
	2002	2003	2004
	Value (\$1,000)		
Capital expenditures ¹	13,680	5,975	12,022
R&D expenses ²	***	***	***
¹ Eleven growers reported capital expenditures. ² *** growers reported R&D expenses.			
Source: Compiled from data submitted in response to Commission questionnaires.			

PART VII: THREAT CONSIDERATIONS

Section 771(7)(F)(i) of the Act (19 U.S.C. § 1677(7)(F)(i)) provides that--

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the subject merchandise, the Commission shall consider, among other relevant economic factors¹--

(I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement), and whether imports of the subject merchandise are likely to increase,

(II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,

(III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,

(IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further imports,

(V) inventories of the subject merchandise,

(VI) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products,

(VII) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission

¹ Section 771(7)(F)(ii) of the Act (19 U.S.C. § 1677(7)(F)(ii)) provides that “The Commission shall consider [these factors] . . . as a whole in making a determination of whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted under this title. The presence or absence of any factor which the Commission is required to consider . . . shall not necessarily give decisive guidance with respect to the determination. Such a determination may not be made on the basis of mere conjecture or supposition.”

under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both),

(VIII) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and

(IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).²

Subsidies are not relevant to this investigation; information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V; and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in Part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows.

THE INDUSTRY IN BRAZIL

Brazil is the world's largest orange juice producer and exporter. The number of orange growers in Brazil is currently between 10,000 and 15,000. Most growers are small farmers unrelated to processors. Approximately 20 percent of Brazil's orange growers produce 80 percent of the total orange production.³ The state of Sao Paulo accounts for 98 percent of Brazil's orange juice production with 11 processing plants.⁴ Publicly available data on the Brazilian orange and orange juice industry are presented in table IV-1.

Area planted increased 3.9 percent from 2001/02 to 2003/04.⁵ In the 2003/04 growing season, Brazil had an estimated 210 million bearing orange trees and 28 million non-bearing trees. Large plantings of trees have occurred in the southern part of the citrus belt, some of them to replace trees

² Section 771(7)(F)(iii) of the Act (19 U.S.C. § 1677(7)(F)(iii)) further provides that, in antidumping investigations, ". . . the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other WTO member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

³ "Brazil Citrus Annual 2003", USDA Foreign Agricultural Service GAIN Report, p. 10, December 17, 2003.

⁴ Abecitrus', The Brazilian Association of Citrus Exporters, website. Retrieved at www.arabbrazil.com/orange.htm.

⁵ Brazil still has the potential to significantly increase its agricultural area and yields. There are millions of hectares of uncultivated land suitable for citriculture in Brazil. In addition, Brazil's oranges are grown on loam soils, which are relatively infertile, and most of Brazil's orange groves are unirrigated. With increased use of fertilizers, fungicides, and other chemical inputs, as well as increased installation of irrigation systems, Brazil could increase its yield. Petition, p. 100.

Table VII-1

Certain orange juice: Brazilian orange bearing trees, production, and utilization of oranges, Brazil stocks, production, exports, and domestic consumption, crop years 2001/02 to 2003/04, and projected 2004/05

Item	2001/02	2002/03	2003/04	Projected 2004/05
Area planted (1,000 acres)	1,914	1,959	1,988	2,055
Area harvested (1,000 acres)	1,788	1,796	1,798	1,813
Bearing trees (millions)	209	210	210	212
Non-bearing trees (millions)	19	24	28	36
Oranges produced (million 90-pound boxes)	361	450	377	467
Oranges processed into FCOJM quantity (million 90-pound boxes)	227	315	243	322
Oranges processed into NFCOJ quantity (million 90-pound boxes)	6	14	14	17
Quantity (million SSE gallons)				
FCOJM:				
Beginning stocks ¹	366	210	334	100
Total production	1,362	1,886	1,521	1,853
Total supply	1,729	2,096	1,855	1,953
Exports	1,497	1,741	1,730	1,706
Domestic consumption	21	21	25	25
Ending stocks	210	334	100	221
NFCOJ:²				
Exports	6	51	79	N/A
<p>¹ San Paulo stocks. ² There is no official estimate for NFCOJ supply and demand in Brazil. Almost all NFCOJ production is exported.</p> <p>Note: Crop year is from July to June.</p> <p>Source: "Brazil Citrus Annual 2003", USDA Foreign Agricultural Service GAIN Report, December 17, 2003;"Brazil Citrus Semi Annual 2003", USDA Foreign Agricultural Service GAIN Report, July 9, 2003; "Brazil Citrus Annual 2004", USDA Foreign Agricultural Service GAIN Report, December 21, 2004; "Brazil Citrus Semi Annual 2004", USDA Foreign Agricultural Service GAIN Report, June 21, 2004.</p>				

affected by disease in the north.^{6 7} Citrus disease has been a restraint on production of orange juice in Brazil. Citrus Variegated Chlorosis (“CVC”), citrus canker, huanglongbing (“HBL”), and sudden citrus death have caused losses to citrus production.⁸ As a result, many growers are moving to the cooler and more humid southern region. Also, to avoid the spread of disease, there has been an increased use of protected nurseries. Other industry changes include greater use of fertilizer and chemicals,⁹ the use of more efficient planting densities (380-400 trees/ha), and increased use of irrigation.¹⁰

There is very little domestic demand for commercially processed orange juice in Brazil,¹¹ therefore Brazil’s orange juice industry is geared for export, with much of the remainder entering inventories. In addition, the oranges that Brazil sells in the fresh market are usually the same oranges that are used for processing, unlike the United States, and could be used for the production of orange juice.¹² In 2003/04, Brazil accounted for approximately 51 percent of the world’s production of orange juice, and exported 95 percent of its production.¹³ During the period of investigation, Brazil’s exports of certain orange juice represented approximately 82 percent of world orange juice exports.¹⁴ Data on other major markets for Brazilian exports are listed in table VII-2. Brazilian processors have worldwide inventories of FCOJM.¹⁵ USDA estimates Brazil’s 2003/04 ending inventories of FCOJM, in Brazil, at 100,2 million gallons SSE. Brazil’s 2003/04 worldwide ending inventories of FCOJM are estimated at 529,2 million gallons SSE.¹⁶

Four Brazilian producers of certain orange juice provided responses to the Commission’s request for information.¹⁷ The firms that responded are Citrosuco,¹⁸ COINBRA,¹⁹ Montecitrus Group

⁶ “Brazil Citrus Semi Annual 2004”, USDA Foreign Agricultural Service GAIN Report, p. 5, June 21, 2004.

⁷ Citrus area expansion is primarily for orange juice processing plants. “Brazil Citrus Annual 2004”, USDA Foreign Agricultural Service GAIN Report, p. 5, December 21, 2004.

⁸ “Brazil Citrus Annual 2004”, USDA Foreign Agricultural Service GAIN Report, p. 6, December 21, 2004. “Brazil Citrus Semi Annual 2004”, USDA Foreign Agricultural Service GAIN Report, p. 5- 6, June 21, 2004.

⁹ “Brazil Citrus Annual 2003”, USDA Foreign Agricultural Service GAIN Report, p. 4, December 17, 2003.

¹⁰ While increasing, irrigation of orange groves still represents less than 10 percent of the commercial orange grove area. Some studies show that only 15 percent of orange groves could be irrigated. Therefore, growers are moving from the northern part of Sao Paulo to the southern part of the state, where irrigation is not necessary. “Brazil Citrus Annual 2003”, USDA Foreign Agricultural Service GAIN Report, p. 10, December 17, 2003.

¹¹ Due to culture, tradition, and limited refrigeration, Brazilians continue to fresh-squeeze orange juice themselves or purchase it from retailers who fresh-squeeze it on-site. Petition, p. 65.

¹² Petitioners’ postconference brief, p. 47.

¹³ PS&D Online, FAS, USDA, November 2004.

¹⁴ Ibid.

¹⁵ Brazil has storage tank farms in Brazil, Florida, the U.S. Northeast, and the EU. Petitioners’ postconference brief, p. 49.

¹⁶ “Brazil Citrus Annual 2004”, USDA Foreign Agricultural Service GAIN Report, pp. 11, 13, December 21, 2004.

¹⁷ In addition, four Brazilian extractor/processors of nonsubject FCOJM provided questionnaire responses: Bascitrus Agro-Industria (“Bascitrus”), Branco Peres, Citrovita, and COINBRA .

¹⁸ ***.

¹⁹ ***.

Table VII-2
Certain orange juice: Export markets for product from Brazil, 2001/02-2003/04

Export market	Crop Year		
	2001/02	2002/03	2003/04
Quantity (million gallons SSE)			
FCOJM:¹			
Belgium ²	521,655	557,486	653,226
Netherlands	487,692	265,243	320,730
USA	176,638	305,134	207,642
Japan	102,115	103,315	111,427
Australia	24,974	35,157	27,601
China	14,445	20,049	50,041
South Korea	46,791	44,169	36,306
Switzerland	10,651	9,975	23,670
Puerto Rico	13,548	13,038	11,679
Others	41,333	37,834	49,645
TOTAL	1,439,842	1,391,399	1,491,967
NFCOJ:³			
Belgium ²	(⁴)	188,523	244,286
USA	(⁴)	59,605	112,201
Netherlands	(⁴)	32,905	74,889
Australia	(⁴)	0	2,179
Chile	(⁴)	449	567
Japan	(⁴)	0	24
Others	(⁴)	74	1,454
TOTAL	(⁴)	281,556	435,599
<p>¹ HTS subheading 2009.11.00. ² The European Union is the largest market for Brazilian FCOJM and NFCOJ, and Belgium is the largest transit port through which Brazilian orange juice flows into the EU. ³ HTS subheading 2009.12.00. This HTS category was added January 1, 2002.</p> <p>Source: "Brazil Citrus Annual 2003", USDA Foreign Agricultural Service GAIN Report, December 17, 2003; "Brazil Citrus Semi Annual 2003", USDA Foreign Agricultural Service GAIN Report, July 9, 2003; "Brazil Citrus Annual 2004", USDA Foreign Agricultural Service GAIN Report, December 21, 2004; "Brazil Citrus Semi Annual 2004", USDA Foreign Agricultural Service GAIN Report, June 21, 2004.</p>			

(“Montecitrus”),²⁰ and Cutrale.²¹ These five firms accounted for approximately 83 percent of Brazilian production in 2004.²² The largest producer of certain orange juice in Brazil is ***, accounting for about *** percent of all certain orange juice production, followed by *** (**% percent).

Cargill (Brazil) was a large orange juice processor in Brazil until July 2004, when Cargill (Brazil)’s orange juice operations in Brazil were sold to Citrusuco and Cutrale. Citrusuco purchased Cargill (Brazil)’s processing plant located in Bebedouro, which added an estimated *** pounds solids to Citrusuco’s capacity.²³ Cutrale acquired Cargill (Brazil)’s Ucoa plant, which increased its capacity by *** boxes. In addition, ***. Table VII-3 presents responding firms’ production of other products on equipment and machinery used in the production of certain orange juice, share of certain orange juice production on the same equipment, and shares of reported sales of certain orange juice as a percentage of their total sales. Aggregate Brazilian certain orange juice production capacity, production quantity, shipments, and inventory data supplied by the responding firms are presented in tables VII-4 through VII-6. Table VII-7 presents data for nonsubject producers of certain orange juice in Brazil.

Table VII-3

Certain orange juice: Brazilian producers, production of other products on the same equipment and machinery, shares of production on the same equipment, and shares of firms’ total sales, 2004

* * * * *

Table VII-4

FCOJM (subject): Brazilian production capacity, production, shipments, and inventories, 2001-03, January-September 2003, January-September 2004, and projected 2004-05

* * * * *

Table VII-5

NFCOJ: Brazilian production capacity, production, shipments, and inventories, 2001-03, January-September 2003, January-September 2004, and projected 2004-05

* * * * *

Brazilian exporters, as well as exporters from the United States, face a variety of tariff and non-tariff barriers for FCOJM in third-country markets. In 2004, the normal trade relations rate of duty for FCOJM, subheading 2009.11.00, was 29.72 cents per SSE gallon. In addition to U.S. tariffs, exporters of FCOJM to the United States are subject to the Florida equalization tax.²⁴

²⁰ ***.

²¹ ***.

²² The Commission e-mailed the foreign producer questionnaire to counsel representing Brazilian producers, and faxed the questionnaire to firms identified in the petition as Brazilian producers that had fax numbers. The Commission also posted the foreign producer questionnaire on its web site.

²³ ***.

²⁴ Since 1970, the state of Florida has imposed an “equalizing excise tax” (\$40/ton) on processed orange and grapefruit products that are imported into the state to be blended with local juices. The excise tax was charged to equalize domestic taxes paid by Floridian producers. The Florida Department of Citrus (FDOC) used a majority of the collected money for marketing programs. In 2002, the government of Brazil filed a request for consultations with the United States through the World Trade Organization (WTO) regarding the excise tax. As a result of bilateral discussions, the Florida Legislature passed into law a bill requiring out-of-state domestic producers to pay the “equalizing excise tax,” and amended the “equalizing excise tax” by lowering it to \$13/ton. As a result, on May 28, 2004, Brazil withdrew its WTO complaint.

Table VII-6

Certain orange juice: Brazilian production capacity, production, shipments, and inventories of FCOJM (subject) and NFCOJ, 2001-03, January-September 2003, January-September 2004, and projected 2004-05

Item	Actual experience					Projections	
	2001	2002	2003	January-September		2004	2005
				2003	2004		
Quantity (1,000 pounds SE)							
Capacity ¹	1,325,729	1,406,924	1,463,083	772,805	886,566	1,659,049	1,695,216
Production	938,309	1,242,382	931,559	483,264	685,993	1,294,534	1,189,459
End of period inventories	408,002	686,163	548,317	395,709	457,206	720,592	694,536
Shipments:							
Internal consumption	***	***	***	***	***	***	***
Home market	***	***	***	***	***	***	***
Exports to--							
United States	153,267	208,038	239,220	180,441	114,007	177,484	228,614
European Union	657,468	599,195	662,606	481,947	515,753	741,797	804,752
Asia	79,819	79,423	100,924	65,589	73,537	106,660	121,521
Other markets	62,194	51,624	73,847	56,768	70,528	87,412	86,821
Total exports	952,747	938,279	1,076,597	784,746	773,825	1,113,353	1,241,708
Total shipments	1,000,931	979,307	1,091,034	795,339	789,422	1,134,576	1,263,834
Value (\$1,000)							
Shipments:							
Internal consumption	***	***	***	***	***	***	***
Home market	***	***	***	***	***	***	***
Exports to--							
United States	75,791	126,910	148,452	114,067	55,186	96,059	112,720
European Union	315,098	383,034	421,770	305,998	315,320	452,722	525,057
Asia	43,772	55,587	67,780	44,396	45,060	65,148	79,932
Other markets	46,899	37,742	57,152	44,453	55,101	65,266	55,273
Total exports	481,559	603,273	695,154	508,914	470,667	679,196	772,982
Total shipments	***	***	***	***	***	***	***

Table continued on next page.

Table VII-6--Continued

Certain orange juice: Brazilian production capacity, production, shipments, and inventories of FCOJM (subject) and NFCOJ, 2001-03, January-September 2003, January-September 2004, and projected 2004-05

Item	Actual experience					Projections	
	2001	2002	2003	January-Sept.		2004	2005
				2003	2004		
Unit value (per pound)							
Shipments:							
Internal consumption	\$***	\$***	\$***	\$***	\$***	\$***	\$***
Home market	***	***	***	***	***	***	***
Exports to--							
United States	0.49	0.61	0.62	0.63	0.48	0.54	0.49
European Union	0.48	0.64	0.64	0.63	0.61	0.61	0.65
Asia	0.55	0.70	0.67	0.68	0.61	0.61	0.66
Other markets	0.75	0.73	0.77	0.78	0.78	0.75	0.64
Total exports	0.51	0.64	0.65	0.65	0.61	0.61	0.62
Total shipments	0.50	0.65	0.65	0.65	0.61	0.61	0.62
Ratios and shares (percent)							
Capacity utilization	70.8	88.3	63.7	62.5	77.4	78.0	70.2
Inventories to production	43.5	55.2	58.9	61.4	50.0	55.7	58.4
Inventories to total shipments	40.8	70.1	50.3	37.3	43.4	63.5	55.0
Share of total quantity of shipments:							
Internal consumption	***	***	***	***	***	***	***
Home market	***	***	***	***	***	***	***
Exports to--							
United States	15.3	21.2	21.9	22.7	14.4	15.6	18.1
European Union	65.7	61.2	60.7	60.6	65.3	65.4	63.7
Asia	8.0	8.1	9.3	8.2	9.3	9.4	9.6
Other markets	6.2	5.3	6.8	7.1	8.9	7.7	6.9
Total exports	95.2	95.8	98.7	98.7	98.0	98.1	98.2
¹ Not applicable.							
Note. – Because of rounding, figures may not add to the totals shown.							
Source: Compiled from data submitted in response to Commission questionnaires.							

Table VII-7

FCOJM (nonsubject): Brazilian production capacity, production, shipments, and inventories, 2001-03, January-September 2003, January-September 2004, and projected 2004-05

* * * * *

U.S. IMPORTERS' INVENTORIES

Four importers reported inventories of imports of FCOJM from Brazil during the period of investigation. Data collected in this investigation on U.S. importers' end-of-period inventories of certain orange juice are presented in table VII-8. Inventory fluctuated slightly over the period, but ended in 2003/04 with an increase of 3.0 percent. The ratio of inventory to imports and the ratio of inventory to U.S. shipments fell significantly from 2001/02 to 2002/03 then increased in 2003/04. The ratio of inventory to imports fell from 27.8 percent in 2001/02 to 24.9 percent in 2003/04. The ratio of inventory to U.S. shipments fell from 32.6 percent in 2001/02 to 27.6 percent in 2003/04.

U.S. IMPORTERS' CURRENT ORDERS FOR CERTAIN ORANGE JUICE

Five firms reported imports or arrangements for the importation of a total of *** certain orange juice from Brazil after September 30, 2004.²⁵

DUMPING IN THIRD-COUNTRY MARKETS

Based on available information, certain orange juice from Brazil has not been subject to any other import relief investigations in the United States or in any other countries.

²⁵ Those firms were ***.

Table VII-8

Certain orange juice: U.S. importers' end-of-period inventories of imports, 2001/02-2003/04¹

Item	Crop year		
	2001/02	2002/03	2003/04
	Inventories (1,000 gallons SSE)		
FCOJM (subject)	***	***	***
FCOJM (Brazil nonsubject)	***	***	***
Total	47,195	56,427	40,528
	Ratio to imports (percent)		
FCOJM (subject)	***	***	***
FCOJM (Brazil nonsubject)	***	***	***
Total	30.7	21.9	25.0
	Ratio to U.S. shipments (percent)		
FCOJM (subject)	***	***	***
FCOJM (Brazil nonsubject)	***	***	***
Total	31.1	24.1	26.7
¹ Four firms reported inventories of FCOJM from Brazil, one firm reported inventories of nonsubject FCOJM, and one firm reported inventories of nonsubject NFCOJ.			
Source: Compiled from data submitted in response to Commission questionnaires.			

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

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-351-840]

Notice of Request for Information and Extension of Time: Certain Orange Juice From Brazil

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

EFFECTIVE DATE: January 25, 2005.

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.

SUPPLEMENTARY INFORMATION:**The Petition**

On December 27, 2004, the Department of Commerce (the Department) received an antidumping duty petition (petition) filed by Florida Citrus Mutual, A. Duda & Sons, Inc. (doing business as Citrus Belle), Citrus World, Inc., Peace River Citrus Products, Inc., and Southern Garden Citrus Processing Corporation (doing business as Southern Gardens) (collectively "the petitioners").

Scope of the Petition

The following language describes the imported merchandise from Brazil that the petitioners intend to be included in the scope of the investigation.

The product under investigation 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 Not-From-Concentrate (NFC).

There is 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 with regard to FCOJM covers only FCOJM produced and/or exported by those companies who were excluded or revoked from the existing antidumping order on FCOJ from Brazil as of December 27, 2004. Those companies are Cargill Citrus Limitada, Citrusuco Paulista S.A., Coopercitrus Industrial Frutesp, Frutropic, Montecitrus Industria e Comercio Limitada, and Sucocitrico Cutrale SA. Reconstituted orange juice and frozen orange juice for retail (FCOJR) are also excluded from the scope of the investigation. 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 item 2009.11.00, 2009.12.25 and 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, but rather the written description of the scope of this investigation is dispositive.

Domestic Like Product

Section 771(10) of the Tariff Act of 1930, as amended (the Act), defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with the article subject to investigation." Thus, the reference point from which the domestic like product analysis begins is "the article subject to investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced

by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (1) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (2) determine industry support using a statistically valid sampling method to poll the industry.

Request for Information

In the instant case, we have received challenges to industry support from U.S. producers and need to determine the production quantities and levels of imports of U.S. producers, as well as the relationships between U.S. and foreign producers, in order to evaluate the calculation of industry support in the petition. Because the petition has not established that domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product support the petition, we must "poll or otherwise determine industry support for the petition by the industry."

In accordance with section 732(c)(4)(D) of the Act and in order to determine whether the petition establishes support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, we are hereby requesting that all domestic producer/manufacturers of certain orange juice submit to the Department a response to the questions posted on Import Administration's Web site: <http://ia.ita.doc.gov>.

Filing Requirements

Given the very short period in which we must determine industry support, the number of potential responses, and the fact that industry support may not be re-examined after initiation, we are waiving the filing requirements set forth in 19 C.F.R. § 351.303 for certain parties submitting information on industry support. This waiver of the filing requirements will not apply to: 1) the submission of documents that are not in response to the information requested in this notice; or 2) parties that are familiar with the conduct of antidumping and countervailing proceedings through prior involvement in such proceedings (*e.g.*, parties represented by law firms that are involved in other AD/CVD cases).

This limited waiver is applicable only until January 26, 2005, the deadline for submitting the information requested in this notice. This waiver is intended to expedite the receipt of information that is essential to our analysis of industry support by providing information on the production of the domestic like product by petitioning and non-petitioning companies. By avoiding delays in the receipt of such information, we will have more time to analyze whether the statutory requirements concerning industry support for the above-referenced petitions have been met.

All parties submitting any information must include the following statement in their response: "I, (name and title), currently employed by (person), certify that (1) I have read the attached submission, and (2) based on the information made available to me by (person), I have no reason to believe that this submission contains any material misrepresentation or omission of fact." All information received by the Department will be treated as business proprietary information as outlined in our regulations (19 CFR 351.304-306), unless otherwise noted. Please note that all company names will be treated as public information. In addition, note that all business proprietary documents received by the Department in response to this notice will be served to those individuals with access to business proprietary information under the Administrative Protective Order (APO). All public documents may be made available to those parties on the public service list. The APO service lists and the public service lists are available on Import Administration's Web site: <http://ia.ita.doc.gov>.

Information submitted to the Department in response to this notice should be faxed to the following number: 202-482-4776. Furthermore, all such information will be placed on the official record of the proceeding. Responses to this notice are due no later than January 26, 2005. Responses after this date may not be reviewed by the Department and therefore, not included in the analysis.

Extension of Time

Section 732(c)(1)(A)(ii) of the Act provides that within 20 days of the filing of an antidumping duty petition, the Department will determine, *inter alia*, whether the petition has been filed by or on behalf of the U.S. industry producing the domestic like product. Section 732(c)(1)(B) provides that the deadline for the initiation determination can be extended by 20 days in any case in which the Department must "poll or

otherwise determine support for the petition by the industry”

We will require additional information from the petitioners and the domestic producers of certain orange juice in order to make our determination regarding industry support and/or time to analyze the petitioners’ responses to our requests for information. See the “Determination of Industry Support for the Petition” section of this notice, above. Therefore, it is necessary to extend the deadline for decision on initiation for a period not to exceed 40 days from the filing of the petition. As a result, the initiation determination is due no later than February 7, 2005.

**International Trade Commission (ITC)
Notification**

Because the Department has extended the deadline of the initiation determination, the Department will contact the ITC and will make this extension notice available to the ITC.

Dated: January 18, 2005.

Joseph A. Spetrini,

*Acting Assistant Secretary for Import
Administration.*

[FR Doc. 05-1355 Filed 1-24-05; 8:45 am]

BILLING CODE: 3510-DS-P

ACTION: Initiation of Antidumping Duty Investigation.

EFFECTIVE DATE: February 11, 2005.

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

Initiation of Investigation: The Petition

On December 27, 2004, the Department of Commerce (the Department) received a petition filed in proper form by Florida Citrus Mutual, A. Duda & Sons, Inc. (doing business as Citrus Belle), Citrus World, Inc., Peace River Citrus Products, Inc.,¹ and Southern Garden Citrus Processing Corporation (doing business as Southern Gardens) (collectively, "the petitioners"). The petitioners filed amendments to the petition on December 29, 2004, January 6, 7, 11, 12, 14, 31, and February 2, 3, and 7, 2005. In order to evaluate further the issue of industry support, on January 25, 2005, the Department published a notice in the **Federal Register** extending the 20-day initiation determination deadline and requesting information from domestic growers of round oranges for processing and producers of certain orange juice. See Notice of Request for Information and Extension of Time: Certain Orange Juice From Brazil, 70 FR 3510 (Jan. 25, 2005) (*Extension Notice*).

In accordance with section 732(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that imports of certain orange juice from Brazil are, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that imports from Brazil are materially injuring, or are threatening to materially injure, an industry in the United States.

The Department finds that the petitioners filed this petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(G) of the Act and they have demonstrated sufficient industry support with respect to the antidumping investigation that they are requesting the Department to initiate. See *infra*, "Determination of Industry Support for the Petition."

Scope of Investigation

The scope of this investigation includes certain orange juice for

DEPARTMENT OF COMMERCE

International Trade Administration

[A-351-840]

Notice of Initiation of Antidumping Duty Investigation: Certain Orange Juice From Brazil

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

¹ Peace River Citrus Products, Inc. withdrew as a petitioner in this proceeding on January 31, 2005.

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 Not-From-Concentrate (NFC).

There is 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 with regard to FCOJM covers only FCOJM produced and/or exported by those companies who were excluded or revoked from the existing antidumping order on FCOJ from Brazil as of December 27, 2004. Those companies are Cargill Citrus Limitada, Citrosuco Paulista S.A., Frutropic S.A., Montecitrus Industria e Comercio Limitada, and Sucocitrico Cutrale SA (Cutrale).

The Department also revoked the existing antidumping duty order on FCOJ with regard to two additional companies, Coopercitrus Industrial Frutesp (Frutesp) and Frutropic S.A. (Frutropic). *See* Frozen Concentrated Orange Juice; Final Results and Termination in Part of Antidumping Duty Administrative Review; Revocation in Part of the Antidumping Duty Order, 56 FR 52510 (Oct. 21, 1991) and *Frozen Concentrated Orange Juice; Final Results of Antidumping Duty Administrative Review and Revocation of Order in Part*, 59 FR 53137 (Oct. 21, 1994). In a supplemental submission to the petition, the petitioners cite the changed circumstances review request by Louis Dreyfus Citrus Ltda. (Louis Dreyfus) and note that Frutropic and Frutesp were purchased by Louis Dreyfus. The petitioners assert that Louis Dreyfus is the successor-in-interest to these revoked companies. The Department has initiated a changed circumstances review in the context of the original order as requested by Louis Dreyfus Citrus in order to determine whether COINBRA–Frutesp (the company created after the ownership change of Frutesp) is the successor-in-interest to Frutesp. Nonetheless, the Department will also examine the successor-in-interest issues for both Frutesp and Fruitropic in the context of this proceeding, and we intend to make a finding no later than the preliminary determination in this case. We note that, should the Department find Louis Dreyfus or COINBRA–Frutesp to be the successor-in-interest to these companies, the successor company will

be included as part of this proceeding. We invite comments from all parties on this issue.

Excluded from the scope of the investigation are 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 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 items 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, but rather the written description of the scope of this investigation is dispositive.

As discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage and/or product issues such as the scope of the investigation. As noted above, there is an existing order on FCOJ from Brazil that differs in certain respects from the scope of this case. The Department is also soliciting comments related to the definition of the class or kind of merchandise under consideration. The Department encourages comments on these issues, as well as on any other issues involving product coverage, no later than April 1, 2005. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry

supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. In investigations involving processed agricultural products, the statute allows the Department also to include growers or producers of the raw agricultural product within the definition of the industry. *See* section 771(4)(E) of the Act. For a full discussion, see the February 7, 2005, Memorandum to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, from Mildred Steward, Attorney, and Vicki Schepker, Senior Policy Analyst, entitled, "Antidumping Duty Petition on Certain Orange Juice from Brazil: Domestic Like Product Analysis and Calculation of Industry Support" ("Like Product/Industry Support Memo"). For the determination of industry support, the Department must identify the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether the domestic industry has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.²

² *See Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 642–44 (CIT 1988) ("the ITC does not look behind ITA's determination, but accepts

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation,” *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

In this case, the domestic like product referred to in the petition is the single domestic like product defined in the “Scope of Investigation” section, above. At this time, the Department has no basis on the record to find the petition’s definition of the domestic like product to be inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the petition. For a discussion of the domestic like product analysis in this case, see the “Like Product/Industry Support Memo.”

On December 30, 2004, and January 5, 2005,³ we received challenges to industry support from certain U.S. producers. Because we required additional time to determine the production quantities and levels of imports of U.S. producers, as well as the relationships between U.S. and foreign producers, we solicited additional information from the U.S. industry, in accordance with section 732(c)(4)(D) of the Act. See Extension Notice, 70 FR at 3511. On January 19, 2005, we issued industry support questionnaires to all known orange growers (via regional grower associations) and producers of certain orange juice. The questionnaire is on file in the Central Records Unit, room B-099 of the main Department of Commerce building, and also available on the Import Administration Web site (see <http://ia.ita.doc.gov/ia-highlights-and-news.html>).

Based on an analysis of the data collected, we determine that the petitioners have demonstrated industry support representing over 50 percent of the total production of the domestic like product. Therefore, the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) of the Act are met. Furthermore, given that the petitioners represent more than 50 percent of the total production of the domestic like product, the requirements

of section 732(c)(4)(A)(ii) of the Act are also met. Accordingly, we determine that this petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. For further discussion, see the “Like Product/Industry Support Memo.”

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate this investigation. The sources of data for the deductions and adjustments relating to U.S. and foreign market prices, cost of production (COP), and constructed value (CV) are discussed in greater detail in the business proprietary version of the petition and in the “Initiation Checklist.” We corrected certain information contained in the petition’s margin calculations. These corrections are set forth in detail in the “Initiation Checklist.” Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determination, we may re-examine this information and revise the margin calculations, if appropriate.

Export Price

The anticipated period of investigation (POI) is October 1, 2003, through September 30, 2004. The petitioners requested that the Department adopt an alternate POI of July 1, 2003, through June 30, 2004, asserting that this period corresponds to the Brazilian harvest/marketing year. According to the petitioners, this period is appropriate because: (1) Both prices and costs in the industry are affected by the juice yield of a particular harvest season and thus the orange juice industry is seasonal; and (2) oranges for processing have a limited shelf life and are therefore perishable. See the petition at pages 18 through 22 and the January 6, 2005, petition supplement at pages 1 and 2. The petitioners assert that the Department has taken seasonality and perishability into account in setting the POI in other cases. See Final Determination of Sales at Less Than Fair Value: Fresh Kiwifruit from New Zealand, 57 FR 13695 (Apr. 17, 1992) (*Kiwifruit from New Zealand*). We have not departed from our standard methodology for determining the POI, as set forth in 19 CFR 351.204(b)(1), because the petitioners have not demonstrated that the margins calculated using the normal POI are unrepresentative of the current level of dumping activity (and thus that seasonality is a concern here). This decision is consistent with the

Department’s treatment of price and cost data in administrative reviews of the existing order on FCOJ from Brazil (*i.e.*, the Department has developed a practice of relying on pricing and cost data for the period under consideration, rather than for the Brazilian marketing year). Regarding perishability, we disagree that the Department’s findings in *Kiwifruit from New Zealand* apply in this case. In *Kiwifruit from New Zealand*, perishability may have affected price trends. Here, however, the perishability at issue is certain orange juice, not oranges for processing. By the petitioners’ own admission, the shelf life of certain orange juice ranges from one to two years. See the January 6 petition supplement at page 2. Consequently, we find the petitioners’ reliance on this case to be misplaced.

The petitioners based export price (EP) on average unit values (AUVs) for subject merchandise derived from official U.S. import statistics for the POI. For one of these calculations, the petitioners used the AUV of imports that entered through the port of New York only. We adjusted this weighted-average AUV to include entries made through all ports in the United States, in accordance with our practice.

Additionally, we deducted amounts for foreign inland freight and insurance, brokerage, handling, and port charges from the AUVs used to derive U.S. prices. See the “Initiation Checklist.”

As part of their allegation, the petitioners provided an AUV for all imports of FCOJM during the POI. Because this import data potentially included merchandise exported by Brazilian companies subject to the existing order on FCOJ, we compared this information to company-specific FCOJM price information provided by the petitioners, as described below, for the specific companies covered by this petition. Based on this comparison, we find that the petitioners’ AUV data is conservative. Therefore we have relied on it for purposes of initiation.

In addition to AUV information, the petitioners also provided company-specific FCOJM price data for each of the companies covered by this petition. However, we have not relied on additional futures data from the New York Board of Trade for one of these companies because the petitioners provided an inadequate link between the Brazilian exporter and the country of origin of the merchandise shipped from the exporter’s U.S. storage facility. Similarly, we have not relied on the information provided for the remaining companies because the origin of the orange juice for which the pricing data was submitted was unclear (*i.e.*, the

ITA’s determination as to which merchandise is in the class of merchandise sold at LTFV.”

³ On February 3, 2005, we received an additional challenge to industry support.

product consisted of a blend of orange juice from numerous countries other than Brazil). For further discussion, see the "Initiation Checklist."

Finally, the petitioners also provided company-specific NFC price data for one Brazilian company. The price information was provided in an affidavit from an official with direct knowledge of the prices charged by Brazilian processors. Thus, we have accepted this data for purposes of initiation. For further discussion, see the "Initiation Checklist."

Normal Value

With respect to normal value (NV), the petitioners stated that home market prices were not reasonably available. To substantiate their argument, the petitioners state that the information reasonably available to them suggests that sales of the foreign like product in the home market are negligible. See the petition at page 63. According to the petitioners, Brazil's orange juice industry is geared almost exclusively to exports. Consequently, the petitioners used statistics on Brazil's third-country exports published by the U.S. Department of Agriculture (USDA) as the basis for determining NV. In selecting the third-country market, the petitioners chose Belgium because: (1) It is the largest third-country market for scope merchandise during the POI; (2) the aggregate quantity of scope merchandise sold by Brazilian exporters to Belgium accounted for more than five percent of the aggregate quantity of the scope merchandise sold in the United States; and (3) the product sold to the Belgian market is comparable to the product which served as the basis for EP. After examining this evidence, we found the petitioners' selection of Belgium as the comparison market to be reasonable.

The petitioners calculated third-country price using quantities and FOB values from the official Brazilian export statistics as published by the USDA with adjustments for Brazilian inland freight and insurance, brokerage, handling, and port charges.

Pursuant to section 773(b) of the Act, the petitioners provided information demonstrating reasonable grounds to believe or suspect that sales by Brazilian producers in the relevant foreign market were made at prices below the cost of production (COP) and, accordingly, requested that the Department conduct a country-wide sales-below-COP investigation in connection with this investigation. See the February 7, 2005, petition supplement. The Statement of Administrative Action (SAA), submitted to the Congress in connection with the

interpretation and application of the URAA, states that an allegation of sales below COP need not be specific to individual exporters or producers. See SAA, H.R. Doc. No. 103-316 at 833 (1994). The SAA, at 833, states that "Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation."

Further, the SAA provides that section 773(b)(2)(A) of the Act retains the requirement that the Department have "reasonable grounds to believe or suspect" that below-cost sales have occurred before initiating such an investigation. Reasonable grounds exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices. *Id.*

Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacturing (COM), selling, general, and administrative (SG&A) expenses, and packing. The petitioners calculated COM based on publicly available information for certain input costs in Brazil, where such information was available. Where such information was not available, the petitioners relied upon input costs provided by U.S. producers, adjusted for known differences between costs incurred to produce certain orange juice in the United States and Brazil. The petitioners did not add packing costs to the COP because certain orange juice is generally transported in tanks, bins, and drums, which are reusable capital.

To calculate SG&A, the petitioners relied on U.S. processor estimates. However, for purposes of initiation, we have recalculated SG&A to be based on the 1998-1999 financial statements for Louis Dreyfus, a Brazilian producer of orange juice, provided by the petitioners in their February 3, 2005, petition supplement because the SG&A reflected in these statements more closely reflect the experience of Brazilian orange juice producers.

Based on a comparison of the Belgian market prices for certain orange juice to the COPs calculated in the petition, we find reasonable grounds to believe or suspect that sales of the foreign like product were made at prices below the COP within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation relating to third-country sales to Belgium. We note, however, that if we determine during

the course of this investigation that the home market (*i.e.*, Brazil) is viable or that Belgium is not the appropriate third-country market upon which to base normal value, our initiation of a country-wide cost investigation with respect to sales to Belgium will be rendered moot.

Because third-country price fell below cost, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in the United States on CV. The petitioners calculated CV using the same COM and SG&A figures used to compute the Belgian third-country market costs. As noted above, however, we based SG&A on the financial statements of Louis Dreyfus. Consistent with section 773(e)(2) of the Act, the petitioners included in CV an amount for profit. For profit, the petitioners initially relied on U.S. processor estimates. In addition, the petitioners also submitted a profit rate based on the 2003 financial statements of a Brazilian beverage producer that does not produce subject merchandise or juice products, in further support of the profit reported in the petition. Also, as noted above, the petitioners provided the 1999 financial statements of Louis Dreyfus. For purposes of initiation, we have relied on the profit data from Louis Dreyfus because it more closely reflects the experience of the Brazilian orange juice industry.

Based on the changes noted above, the recalculated dumping margins for certain orange juice from Brazil range from 24.12 percent to 60.29 percent.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of certain orange juice from Brazil are being, or are likely to be, sold at less than fair value.

Allegation and Evidence of Material Injury and Causation

With regard to Brazil, the petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV.

The petitioners contend that the industry's injured condition is evident in the declining trends in market share, sales value and revenue, production volume, shipments, and employment. These factors apply to both the firms that produce certain orange juice, and the growers of the raw agricultural product, *i.e.*, oranges for processing. The allegations of injury and causation are

supported by relevant evidence including information from U.S. import statistics, the New York Board of Trade, industry studies and reports, the USDA, and press reports from a variety of sources. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. See the "Initiation Checklist" at Attachment III.

Regarding the existing antidumping order on FCOJ from Brazil, the petitioners stated in their January 6, 2005, petition supplement that the existing order has had a very limited effect in preventing the dumping alleged in the petition. According to the petitioners, the FCOJ pricing evident in the marketplace (both before and after the hurricane damage in the fall of 2004) confirms that the current order has ceased to have any corrective impact. In addition, the petitioners point out that, because the existing order only covers FCOJ, not NFC, it has no impact in preventing damage inflicted by dumped NFC from Brazil.

Initiation of Antidumping Investigation

Based upon our examination of the petition on certain orange juice, we have found that it meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of certain orange juice from Brazil are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended pursuant to section 733(b)(1)(A) of the Act, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the government of Brazil. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as provided for under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine no later than March 7, 2005, whether there is a reasonable indication that imports of certain orange juice from

Brazil are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: February 7, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5-587 Filed 2-10-05; 8:45 am]

BILLING CODE 3510-DS-P

APPENDIX B
CONFERENCE WITNESSES

CALENDAR OF THE PUBLIC CONFERENCE

Those listed below appeared as witnesses at the United States International Trade Commission's conference held in connection with the following investigation:

Subject: Certain Orange Juice from Brazil
Investigation No.: 731-TA-1089 (Preliminary)
Date and Time: January 19, 2005 - 9:30 am

The conference was held in Room 101 (Main Hearing Room) of the United States International Trade Commission Building, 500 E Street, SW, Washington, DC.

Opening Remarks:

Petitioners, (**Matthew T. McGrath**, Barnes, Richardson & Colburn)
Respondents, (**Christopher Dunn**, Willkie, Farr & Gallagher)

In Support of the Imposition of Antidumping Duties:

Barnes, Richardson & Colburn
Washington, DC
on behalf of

Florida Citrus Mutual
A. Duda & Sons, Inc. (doing business as Citrus Belle)
Citrus World, Inc.
Peace River Citrus Products, Inc.
Southern Garden Citrus Processing Corporation (doing business as Southern Gardens)

Andrew LaVigne, Executive Vice President and CEO, Florida Citrus Mutual
Martin McKenna, President, Florida Citrus Mutual Grower
Robert Behr, Vice President, Planning and Product Services, Citrus World, Inc.
Charles Lucas, Vice President, Southern Gardens Citrus
Amy Warlick, Economist, Barnes, Richardson & Colburn

Matthew T. McGrath - OF COUNSEL
Stephen W. Brophy
Neven Stipanovic

In Opposition to the Imposition of Antidumping Duties:

Willkie, Farr & Gallagher
Washington, DC
on behalf of

Louis Dreyfus Citrus SA, and Louis Dreyfus Citrus, Inc.
Sucocitrico Cutrale Ltda.

In Opposition to the Imposition of Antidumping Duties:—*Continued*

Daniel Tilley, Professor of Agricultural Economics, Oklahoma State University
Randal Freeman, Senior Vice President, Louis Dreyfus Citrus Inc.
Hugh Thompson, President, Cutrale Citrus Juices USA, Inc.

Christopher Dunn - OF COUNSEL
Rebecca Griffin

Kalik & Lewin
Bethesda, MD
on behalf of

Citrosuco Paulista, S.A.
Citrosuco North America, Inc.

Nick Emmanuel, CEO and President, Citrosuco America
Jerry Rice, Former CEO and President of Lykes Pasco

Robert Kalik - OF COUNSEL
Brenna Steinert

Miller & Chevalier
Washington, DC
on behalf of

Montecitrus Group

F. Amanda DeBusk - OF COUNSEL
Duane W. Layton
Sydney H. Mintzer

Closing Remarks:

Petitioners, (**Matthew T. McGrath**, Barnes, Richardson & Colburn)
Respondents, (**Robert Kalik**, Kalik & Lewin)

**APPENDIX C
SUMMARY DATA**

Table C-1

FCOJM: Summary data concerning the U.S. market, crop years 2001/02 - 2003/04

(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 -	2001/02 -	2002/03 -
	2001/02	2002/03	2003/04	2003/04	2002/03	2003/04
	Quantity (1,000 gallons SSE)					
Beginning stocks	692,065	659,957	696,560	0.6	-4.6	5.5
U.S. production	842,442	638,889	869,753	3.2	-24.2	36.1
U.S. exports	121,753	37,389	56,847	-53.3	-69.3	52.0
Ending stocks	659,957	696,560	797,625	20.9	5.5	14.5
Total domestic shipments	752,797	564,898	711,841	-5.4	-25.0	26.0
U.S. imports:						
Brazil (subject)	***	***	***	***	***	***
Brazil (nonsubject)	***	***	***	***	***	***
All other sources	73,140	58,708	62,603	-14.4	-19.7	6.6
Total imports	177,997	264,772	205,021	15.2	48.8	-22.6
Total available	930,793	829,670	916,862	-1.5	-10.9	10.5
U.S. imports from:						
Brazil (subject sources):						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***
Brazil (nonsubject sources):						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***
All other sources:						
Quantity	73,140	58,708	62,603	-14.4	-19.7	6.6
Value	99,732	74,759	51,097	-48.8	-25.0	-31.7
Unit value	\$1.36	\$1.27	\$0.82	-40.1	-6.6	-35.9
Ending inventory quantity	0	0	0	(2)	(2)	(2)
All sources:						
Quantity	177,997	264,772	205,021	15.2	48.8	-22.6
Value	190,073	280,468	178,455	-6.1	47.6	-36.4
Unit value	\$1.07	\$1.06	\$0.87	-18.5	-0.8	-17.8
Ending inventory quantity	47,195	56,427	40,528	-14.1	19.6	-28.2
U.S. processors:						
Average capacity quantity	939,148	891,391	956,823	1.9	-5.1	7.3
Production quantity	844,712	600,713	868,275	2.8	-28.9	44.5
Capacity utilization (1)	89.9	67.4	90.7	0.8	-22.6	23.4
U.S. shipments:						
Quantity	758,226	599,378	718,438	-5.2	-20.9	19.9
Value	776,935	644,503	649,190	-16.4	-17.0	0.7
Unit value	\$1.02	\$1.08	\$0.90	-11.8	4.9	-16.0
Export shipments:						
Quantity	67,358	38,456	58,849	-12.6	-42.9	53.0
Value	68,501	38,853	53,701	-21.6	-43.3	38.2
Unit value	\$1.02	\$1.01	\$0.91	-10.3	-0.7	-9.7
Ending inventory quantity	242,532	205,411	296,468	22.2	-15.3	44.3
Inventories/total shipments (1)	29.4	32.2	38.1	8.8	2.8	5.9
Production workers	1,850	1,571	1,841	-0.5	-15.1	17.2
Hours worked (1,000s)	4,403	3,403	4,086	-7.2	-22.7	20.1
Wages paid (\$1,000s)	55,350	41,464	49,659	-10.3	-25.1	19.8
Hourly wages	\$12.57	\$12.18	\$12.15	-3.3	-3.1	-0.3
Productivity (pounds per hour)	191.8	176.5	212.5	10.8	-8.0	20.4
Unit labor costs	\$0.07	\$0.07	\$0.06	-12.7	5.3	-17.1
U.S. corporations:						
Net sales:						
Quantity	600,311	496,224	587,269	-2.2	-17.3	18.3
Value	604,313	513,879	541,149	-10.5	-15.0	5.3
Unit value	\$1.01	\$1.04	\$0.92	-8.5	2.9	-11.0
Cost of goods sold (COGS)	576,064	495,001	543,068	-5.7	-14.1	9.7
Gross profit or (loss)	28,249	18,878	(1,919)	(2)	-33.2	(2)
SG&A expenses	21,373	19,954	21,358	-0.1	-6.6	7.0
Operating income or (loss)	6,876	(1,076)	(23,277)	(2)	(2)	-2063.3
Unit COGS	\$0.96	\$1.00	\$0.92	-3.6	4.0	-7.3
Unit SG&A expenses	\$0.04	\$0.04	\$0.04	2.1	12.9	-9.6
Unit operating income or (loss)	\$0.01	(\$0.00)	(\$0.04)	(2)	(2)	-1727.9
COGS/sales (1)	95.3	96.3	100.4	5.0	1.0	4.0
Operating income or (loss)/ sales (1)	1.1	(0.2)	(4.3)	-5.4	-1.3	-4.1

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

(2) Undefined.

Note.--Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a crop year basis. Because of rounding, figures may not add to the totals shown. Unit values and shares are calculated from the unrounded figures.

Source: Compiled from official Commerce statistics, from data provided by the U.S. Department of Agriculture, and from data submitted in response to Commission questionnaires.

Table C-2
NFCOJ: Summary data concerning the U.S. market, crop years 2001/02 - 2003/04

(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 -	2001/02 -	2002/03 -
	2001/02	2002/03	2003/04	2003/04	2002/03	2003/04
Quantity (1,000 gallons SSE)						
Beginning stocks	0	0	0	(2)	(2)	(2)
U.S. production	532,007	579,008	581,339	9.3	8.8	0.4
U.S. exports	51,857	57,320	58,851	13.5	10.5	2.7
Ending stocks	0	0	0	(2)	(2)	(2)
Total domestic shipments	480,150	521,688	522,488	8.8	8.7	0.2
U.S. imports:						
Brazil (subject)	4,871	21,216	11,785	141.9	335.5	-44.5
Brazil (nonsubject)	0	0	0	(2)	(2)	(2)
All other sources	2,419	881	1,564	-35.3	-63.6	77.6
Total imports	7,291	22,097	13,349	83.1	203.1	-39.6
Total available	487,441	543,785	535,837	9.9	11.6	-1.5
U.S. imports from:						
Brazil (subject):						
Quantity	4,871	21,216	11,785	141.9	335.5	-44.5
Value	8,822	36,550	15,344	73.9	314.3	-58.0
Unit value	\$1.81	\$1.72	\$1.30	-28.1	-4.9	-24.4
Ending inventory quantity	0	0	0	(2)	(2)	(2)
All other sources:						
Quantity	2,419	881	1,564	-35.3	-63.6	77.6
Value	3,370	1,734	2,551	-24.3	-48.5	47.1
Unit value	\$1.39	\$1.97	\$1.63	17.1	41.4	-17.2
Ending inventory quantity	0	0	0	(2)	(2)	(2)
All sources:						
Quantity	7,291	22,097	13,349	83.1	203.1	-39.6
Value	12,192	38,285	17,895	46.8	214.0	-53.3
Unit value	\$1.67	\$1.73	\$1.34	-19.8	3.6	-22.6
Ending inventory quantity	0	0	0	(2)	(2)	(2)
U.S. processors:						
Average capacity quantity	644,986	692,744	672,311	4.2	7.4	-2.9
Production quantity	485,773	545,384	552,842	13.8	12.3	1.4
Capacity utilization (1)	75.3	78.7	82.2	6.9	3.4	3.5
U.S. shipments:						
Quantity	470,043	524,930	525,507	11.8	11.7	0.1
Value	630,227	733,818	713,769	13.3	16.4	-2.7
Unit value	\$1.34	\$1.40	\$1.36	1.3	4.3	-2.8
Export shipments:						
Quantity	15,485	8,770	8,835	-42.9	-43.4	0.7
Value	19,673	11,144	10,179	-48.3	-43.4	-8.7
Unit value	\$1.27	\$1.27	\$1.15	-9.3	0.0	-9.3
Ending inventory quantity	148,822	166,447	184,947	24.3	11.8	11.1
Inventories/total shipments (1)	30.7	31.2	34.6	4.0	0.5	3.4
Production workers	2,129	1,843	1,638	-23.1	-13.4	-11.1
Hours worked (1,000s)	4,474	4,501	3,936	-12.0	0.6	-12.5
Wages paid (\$1,000s)	66,262	76,634	71,987	8.6	15.7	-6.1
Hourly wages	\$14.81	\$17.03	\$18.29	23.5	15.0	7.4
Productivity (pounds per hour)	108.6	121.2	140.4	29.4	11.6	15.9
Unit labor costs	\$0.14	\$0.14	\$0.13	-4.5	3.0	-7.3
U.S. corporations:						
Net sales:						
Quantity	102,005	130,314	110,339	8.2	27.8	-15.3
Value	133,247	172,444	144,486	8.4	29.4	-16.2
Unit value	\$1.31	\$1.32	\$1.31	0.2	1.3	-1.0
Cost of goods sold (COGS)	106,630	138,368	115,072	7.9	29.8	-16.8
Gross profit or (loss)	26,617	34,076	29,414	10.5	28.0	-13.7
SG&A expenses	5,676	8,050	7,422	30.8	41.8	-7.8
Operating income or (loss)	20,941	26,026	21,992	5.0	24.3	-15.5
Unit COGS	\$1.05	\$1.06	\$1.04	-0.2	1.6	-1.8
Unit SG&A expenses	\$0.06	\$0.06	\$0.07	20.9	11.0	8.9
Unit operating income or (loss)	\$0.21	\$0.20	\$0.20	-2.9	-2.7	-0.2
COGS/sales (1)	80.0	80.2	79.6	-0.4	0.2	-0.6
Operating income or (loss)/ sales (1)	15.7	15.1	15.2	-0.5	-0.6	0.1

(1) "Reported data" are in percent and "period changes" are in percentage points.
(2) Not applicable.

Note.--Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a crop year basis. Because of rounding, figures may not add to the totals shown. Unit values and shares are calculated from the unrounded figures.

Source: Compiled from official Commerce statistics, from data provided by the U.S. Department of Agriculture, and from data submitted in response to Commission questionnaires.

Table C-3

FCOJ and NFCOJ: Summary data concerning the U.S. market, crop years 2001/02 - 2003/04

(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 -	2001/02 -	2002/03 -
	2001/02	2002/03	2003/04	2003/04	2002/03	2003/04
	Quantity (1,000 gallons SSE)					
Beginning stocks	692,065	659,957	696,560	0.6	-4.6	5.5
U.S. production	1,374,449	1,217,897	1,451,092	5.6	-11.4	19.1
U.S. exports	173,610	94,709	115,698	-33.4	-45.4	22.2
Ending stocks	659,957	696,560	797,625	20.9	5.5	14.5
Total domestic shipments	1,232,947	1,086,586	1,234,329	0.1	-11.9	13.6
U.S. imports:						
Brazil (subject)	***	***	***	***	***	***
Brazil (nonsubject)	***	***	***	***	***	***
All other sources	75,559	59,589	64,167	-15.1	-21.1	7.7
Total imports	185,287	286,869	218,370	17.9	54.8	-23.9
Total available	1,418,234	1,373,455	1,452,699	2.4	-3.2	5.8
U.S. imports from:						
Brazil (subject sources):						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***
Brazil (nonsubject sources):						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***
All other sources:						
Quantity	75,559	59,589	64,167	-15.1	-21.1	7.7
Value	103,102	76,494	53,648	-48.0	-25.8	-29.9
Unit value	\$1.36	\$1.28	\$0.84	-38.7	-5.9	-34.9
Ending inventory quantity	0	0	0	(2)	(2)	(2)
All sources:						
Quantity	185,287	286,869	218,370	17.9	54.8	-23.9
Value	202,265	318,753	196,350	-2.9	57.6	-38.4
Unit value	\$1.09	\$1.11	\$0.90	-17.6	1.8	-19.1
Ending inventory quantity	47,195	56,427	40,528	-14.1	19.6	-28.2
U.S. processors:						
Average capacity quantity	1,584,134	1,584,135	1,629,134	2.8	0.0	2.8
Production quantity	1,330,485	1,146,097	1,421,117	6.8	-13.9	24.0
Capacity utilization (1)	84.0	72.3	87.2	3.2	-11.6	14.9
U.S. shipments:						
Quantity	1,228,269	1,124,308	1,243,945	1.3	-8.5	10.6
Value	1,407,162	1,378,321	1,362,959	-3.1	-2.0	-1.1
Unit value	\$1.15	\$1.23	\$1.10	-4.4	7.0	-10.6
Export shipments:						
Quantity	82,843	47,226	67,684	-18.3	-43.0	43.3
Value	88,174	49,997	63,880	-27.6	-43.3	27.8
Unit value	\$1.06	\$1.06	\$0.94	-11.3	-0.5	-10.9
Ending inventory quantity	391,354	371,858	481,415	23.0	-5.0	29.5
Inventories/total shipments (1)	29.8	31.7	36.7	6.9	1.9	5.0
Production workers	3,979	3,414	3,479	-12.6	-14.2	1.9
Hours worked (1,000s)	8,877	7,904	8,022	-9.6	-11.0	1.5
Wages paid (\$1,000s)	121,612	118,098	121,647	0.0	-2.9	3.0
Hourly wages	\$13.70	\$14.94	\$15.16	10.7	9.1	1.5
Productivity (pounds per hour)	149.9	145.0	177.1	18.2	-3.3	22.2
Unit labor costs	\$0.09	\$0.10	\$0.09	-6.4	12.7	-16.9
U.S. corporations:						
Net sales:						
Quantity	702,316	626,538	697,608	-0.7	-10.8	11.3
Value	737,560	686,323	685,635	-7.0	-6.9	-0.1
Unit value	\$1.05	\$1.10	\$0.98	-6.4	4.3	-10.3
Cost of goods sold (COGS)	682,694	633,369	658,140	-3.6	-7.2	3.9
Gross profit or (loss)	54,866	52,954	27,495	-49.9	-3.5	-48.1
SG&A expenses	27,049	28,004	28,780	6.4	3.5	2.8
Operating income or (loss)	27,817	24,950	(1,285)	(2)	-10.3	(2)
Unit COGS	\$0.97	\$1.01	\$0.94	-2.9	4.0	-6.7
Unit SG&A expenses	\$0.04	\$0.04	\$0.04	7.1	16.1	-7.7
Unit operating income or (loss)	\$0.04	\$0.04	(\$0.00)	(2)	0.5	(2)
COGS/sales (1)	92.6	92.3	96.0	3.4	-0.3	3.7
Operating income or (loss)/ sales (1)	3.8	3.6	(0.2)	-4.0	-0.1	-3.8

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

(2) Undefined.

Note.--Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a crop year basis. Because of rounding, figures may not add to the totals shown. Unit values and shares are calculated from the unrounded figures.

Source: Compiled from official Commerce statistics, from data provided by the U.S. Department of Agriculture, and from data submitted in response to Commission questionnaires.

APPENDIX D
COMMENTS REGARDING LIKE PRODUCT FACTORS

Comparability of FCOJM and NFCOJ

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