

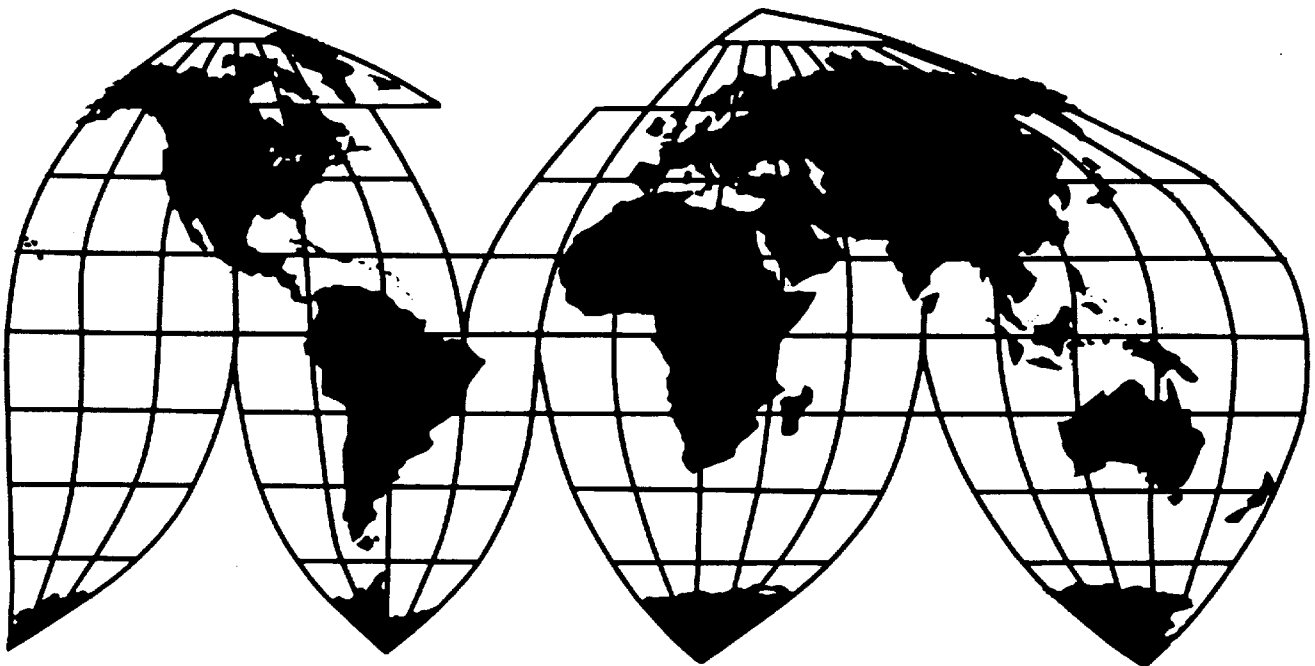
Certain Orange Juice From Brazil

Investigation No. 731-TA-1089 (Final)

Publication 3838

March 2006

U.S. International Trade Commission



Washington, DC 20436

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Note.—Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

CERTAIN ORANGE JUICE FROM BRAZIL

DETERMINATION

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission (Commission) determines,² pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Brazil of certain orange juice, provided for in subheading 2009.11.00, 2009.12.25, 2009.12.45, and 2009.19.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV). The Commission makes a negative finding with regard to critical circumstances.

BACKGROUND

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

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

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

VIEWS OF THE COMMISSION

Based on the record in this investigation, we find that an industry in the United States is materially injured by reason of imports of certain orange juice from Brazil found to be sold in the United States at less than fair value (“LTFV”).¹

I. DOMESTIC LIKE PRODUCT

A. In General

In determining 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.”² 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.”³ 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”⁴

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.⁵ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁶ The Commission looks for clear dividing lines among possible like products and disregards minor variations.⁷ Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly sold at LTFV, the Commission determines what

¹ Vice Chairman Okun, Commissioner Hillman, and Commissioner Pearson dissenting. See Dissenting Views. They join sections I and II of these Views regarding the domestic like product definition for certain organic orange juice, the domestic industry definition, and related parties. They do not join section I.C.1 on conventional FCOJM and NFC but otherwise join the remainder of sections I and II of these Views.

² 19 U.S.C. § 1677(4)(A).

³ 19 U.S.C. § 1677(4)(A).

⁴ 19 U.S.C. § 1677(10).

⁵ 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).

⁶ See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

⁷ Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49. See also S. Rep. No. 96-249 at 90-91 (1979) (Congress has indicated that the 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.”).

domestic product is like the imported articles Commerce has identified.⁸ 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.⁹

B. Product Description

In its final determination, Commerce defined the imported merchandise within the scope of the investigation as follows:

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).¹⁰

Commerce expressly excluded from the scope reconstituted and retail orange juice 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.¹¹

C. Analysis

Petitioners, as well as Respondents Coca-Cola, Louis Dreyfus and Cutrale, argue that the Commission should find a single domestic like product that includes conventional FCOJM and NFC and organic FCOJM and NFC, coextensive with Commerce's scope.¹² Respondents Citrusuco and Tropicana contend that FCOJM and NFC are two separate like products.¹³ Respondent Montecitrus urges the

⁸ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

⁹ 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 1998) (particularly addressing like product determination); Citrusuco Paulista, S.A. v. United States, 704 F.Supp. 1075, 1087-88 (Ct. Int'l. Trade 1988).

¹⁰ 71 F.R. 2183 (January 13, 2006).

¹¹ Id.

¹² Petitioners' Prehearing Br. at 6-28; Coca-Cola Prehearing Br. at 1-2; Cutrale & Louis Dreyfus Posthearing Br. at 2 n.1. During the preliminary phase of this investigation, Respondents Cutrale and Louis Dreyfus argued that FCOJM and NFC were two separate domestic like products. Respondent Coca-Cola did not participate as a party in the preliminary phase of this investigation.

¹³ Citrusuco Prehearing Br. at 2-11; Tropicana Prehearing Br. at 3-21.

Commission to find four separate like products: (1) organic FCOJM, (2) organic NFC, (3) conventional FCOJM, and (4) conventional NFC.¹⁴

1. Whether Conventional FCOJM and Conventional NFC Are Separate Domestic Like Products

Physical Characteristics and Uses: FCOJM and NFC are both made from the same types of “round” oranges and therefore bear a substantial degree of similarity in terms of physical characteristics.¹⁵ FCOJM is six or seven times more concentrated than NFC.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 of about 65 whereas NFC generally has a Brix of almost 12.¹⁷ Despite this difference in Brix levels, purchasers generally found both forms comparable. Twelve out of 18 U.S. purchasers reported that FCOJM and NFC are comparable with regard to shelf-life.¹⁸ With respect to purchasers who reported purchasing both forms of the product, 8 out of 9 purchasers reported that FCOJM and NFC are comparable in terms of color and ingredients, 7 out of 9 purchasers reported them comparable for viscosity, packaging, and vitamin content, 6 out of 9 purchasers reported comparable shelf-life, and 6 out of 8 reported comparable Brix levels.¹⁹

FCOJM and NFC are both bulk intermediate products predominantly used to produce single-strength orange juice for retail consumption.²⁰ Whereas NFC is dedicated exclusively to producing single-strength orange juice for retail, a small amount of FCOJM is used for manufacturing food items such as jams and jellies, and as an ingredient in carbonated and non-carbonated drinks such as multi-juice fruit beverages.²¹ However, these other end uses accounted for only *** percent of total U.S. shipments of domestically produced FCOJM in crop year 2004/05, indicating that they are relatively minor compared with the predominant end use of producing single-strength orange juice.²²

Interchangeability: At the bulk level, conventional FCOJM and NFC are interchangeable in the sense that either can be used to produce single-strength retail orange juice. We recognize that NFC is rarely, if ever, used to produce FCOJM and FCOJM cannot be “unconcentrated” and converted into NFC.²³ However, while there are physical differences, the predominant use of both FCOJM and NFC is still the production of single-strength retail juice. Furthermore, almost all purchasers who purchase both FCOJM and NFC reported that the bulk level products are comparable when specific factors are

¹⁴ Montecitrus Prehearing Br. at 1.

¹⁵ CR at I-9; PR at I-7. The specific type of round oranges being harvested varies throughout the season with “early” oranges such as Hamlins picked first while Valencias are harvested later, generally beginning in March. Furthermore, individual producers prefer different orange blends based on desired characteristics such as color, flavor, sweetness, and pulp content. CR at I-9; PR at I-7.

¹⁶ CR at I-7; PR at I-6.

¹⁷ CR at I-7 & I-9; PR at I-6 & I-7.

¹⁸ CR/PR at Table II-4.

¹⁹ CR/PR at Table II-4.

²⁰ CR at I-8; PR at I-7.

²¹ Id.

²² These other end uses accounted for *** percent of total U.S. shipments of domestically produced FCOJM in crop year 2001/02, *** percent of total U.S. shipments of domestically produced FCOJM in crop year 2002/03, and *** percent of total U.S. shipments of domestically produced FCOJM in crop year 2003/04. CR/PR at Table I-3.

²³ CR at I-7; PR at I-6; Tropicana Prehearing Br. at 12; Citrusuco Prehearing Br. at 9-10.

considered.²⁴ Accordingly, we do not view the fact that FCOJM and NFC are different physical forms of the same wholesale product as detracting from their essential interchangeability in the manufacture of retail orange juice.

Channels of Distribution: FCOJM and NFC are generally sold in bulk to distributors, remanufacturers, and packagers.²⁵ The questionnaire responses received by the Commission show that conventional FCOJM and NFC have significant overlap in the channels of distribution, particularly in the remanufacturers and repackagers channel.²⁶ In addition, the largest U.S. purchasers of bulk orange juice buy both FCOJM and NFC and reported that they further process or repackage both at the same facilities.²⁷

Common Manufacturing Facilities, Employees, and Methods: The manufacturing processes, employees, and facilities used to make FCOJM and NFC demonstrate a significant degree of overlap. The record indicates that domestic producers accounting for *** percent of U.S. production in crop year 2004/05 manufacture FCOJM and NFC at the same plant facility using the same employees.²⁸ Data on the record also show that in the manufacturing facilities which produce both FCOJM and NFC, a significant majority of the production costs of both products are incurred during the same manufacturing process and on shared equipment, particularly when the expense of the raw material used in both products (*i.e.*, round oranges) is considered in the overall cost.²⁹ During the manufacturing process, oranges used for FCOJM and NFC are all sized, graded, washed, and stored in bins until the point of juice extraction.³⁰ The equipment used to extract juice from the oranges is the same for FCOJM and NFC.³¹ The extractor and finisher pressures used on the equipment depend upon the ripeness of the orange, regardless of whether FCOJM or NFC is produced.³²

After juice extraction, the production processes for FCOJM and NFC diverge. Juice made into FCOJM is sent to an evaporator where most of the water is taken out by vacuum and heat to obtain a base concentration level, typically 65 degrees Brix.³³ Juice made into NFC is sent to a pasteurizer and is processed by flash-heating without removing any water content from the juice.³⁴

Following these separate processes, both products enter storage until they are needed for production of retail orange juice. FCOJM is stored at twenty degrees Fahrenheit or lower in tank farms or 55-gallon drums until it is reconstituted and packaged for sale.³⁵ Orange juice in FCOJM form is less expensive to transport and store since it takes up less space and weighs less than juice in the non-concentrated form.³⁶ NFC is de-oiled with a centrifuge, then either pasteurized, chilled, and packaged or

²⁴ CR/PR at Table II-4.

²⁵ CR/PR at Table I-3; CR at I-16; PR at I-12.

²⁶ CR/PR at Table I-3; CR at I-16; PR at I-12; CR/PR at Appendix D-13 to D-16.

²⁷ Petitioners' Prehearing Br. at 18; CR at I-19; PR at I-12.

²⁸ CR/PR at Table III-5.

²⁹ CR/PR at Table III-10.

³⁰ CR at I-9 to I-10; PR at I-7.

³¹ CR at I-10; PR at I-7; Citrusuco Prehearing Br. at 6; Tropicana Prehearing Br. at 15-16; Petitioners' Prehearing Br. at 17.

³² Hearing Tr. at 120 (Chapman).

³³ CR at I-7 & I-11; PR at I-6 & I-7.

³⁴ CR at I-7; PR at I-6.

³⁵ CR at I-11; PR at I-7-8.

³⁶ *Id.*

stored for future sale and/or packaging.³⁷ 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.³⁸

Producer and Customer Perceptions: Petitioners and three Respondents argue that FCOJM and NFC are perceived to be similar products, whereas two other Respondents insist that NFC is perceived to be superior to FCOJM.³⁹ The questionnaire responses addressing customer perceptions held by the immediate purchasers (e.g., remanufacturers, packers, grocery stores, and food service establishments)⁴⁰ suggest that these customers perceive NFC as superior to FCOJM not because they find NFC has superior handling or quality features at the wholesale level, but because NFC single-strength orange juice is marketed downstream as a premium product at the retail level.⁴¹

Price: Throughout the period examined, domestically produced conventional NFC carried a price premium at the wholesale level over domestically produced conventional FCOJM with a \$0.25 per pound (or *** percent) price premium in crop year 2001/02, a \$0.25 per pound (or 24 percent) price premium in crop year 2002/03, a \$0.38 per pound (or *** percent) price premium in crop year 2003/04, and a \$0.36 per pound (or *** percent) price premium in crop year 2004/05.⁴² The responses to the Commission's questionnaires confirm that, on average, NFC carries a price premium over FCOJM at the wholesale level.⁴³ Petitioners and certain of the Respondents agree, however, that the wholesale price premium for NFC is driven primarily by its higher storage and transportation costs.⁴⁴ This is distinct from pricing at the retail level where brand names and advertising strongly affect pricing. Furthermore, the wholesale price premium for NFC overstates any price premium at the retail level. While NFC may have a wholesale price premium over FCOJM, the processing of NFC for retail does not require the reconstitution costs that FCOJM must incur (i.e., the addition of water, oil, and essences which had been removed during the evaporation process). These reconstitution costs are passed along to retail FCOJ purchasers at the next level of trade.

Conclusion: On balance, we find that the six like product factors discussed above weigh in favor of finding a single domestic like product. We also find it significant that, unlike in the preliminary phase, three Respondents (i.e., Coca-Cola, Cutrale, and Louis Dreyfus) have urged the Commission to find a

³⁷ *Id.*

³⁸ *Id.*

³⁹ CR at I-12 to I-13; PR at I-8 to I-9; CR/PR at Appendix D-16 to D-19.

⁴⁰ CR at Appendix D-19 to D-20; PR at Appendix D-18 to D-19.

⁴¹ *See* CR at D-18-20; PR at D-17-20 (***: "Customers are influenced to believe that NFCOJ is a more pure product thru ads and labeling;" ***: "NFC is typically viewed by the U.S. consumer as a premium good. . . . As such, the production of NFCOJ is more profitable than FCOJM;" ***: "NFCOJ is perceived as a superior product as compared to FCOJM because of its fresher taste. NFC is promoted and advertised to a much greater extent than FCOJM."). The Commission has stated that it generally looks to customer perceptions of those customers who purchase products from the manufacturers, rather than the perceptions of the ultimate end-users, unless the product is one that a customer purchases directly "off the shelf" at the retail level. *See Automotive Replacement Glass Windshields from China*, Inv. No. 731-TA-922 (Final), USITC Pub. 3494 (March 2002) at 8, n. 37 (contrasting the practice of customers of that product, and of *Certain Brake Drums and Rotors from China*, Inv. No. 731-TA-744 (Final), USITC Pub. 3035 (April 1997) who did not generally buy the products off the shelf, with those of customers of other products, such as pasta, bicycles, and roses, (*Certain Pasta from Italy and Turkey*, Invs. Nos. 701-TA-365-366, 731-TA-734-735 (Final), USITC Pub. 2977 at 10-11 (July 1996); *Bicycles from China*, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 at 6 (July 1996); *Fresh Cut Roses from Columbia and Ecuador*, Invs. Nos. 731-TA-684-685 (Final), USITC Pub. 2862 at I-7 (March 1995)) where customers did so and where consideration of the ultimate end-user's opinion was more relevant).

⁴² Derived from CR/PR at Table I-4.

⁴³ CR at Appendix D-20 to D-22; PR at Appendix D-19 to D-22.

⁴⁴ CR at I-19; PR at I-13; Hearing Tr. at 269 (Casper), 311-12 (Clark).

single domestic like product in this final phase investigation. Absent any clear dividing line based upon the above analysis, we find that conventional FCOJM and NFC are a single domestic like product.

2. Whether Organic FCOJM and Organic NFC Are Separate Domestic Like Products

Physical Characteristics and Uses: Organic FCOJM and organic NFC are produced from the same types of “round” oranges used to produce conventional FCOJM and NFC.⁴⁵ Under the U.S. Department of Agriculture (“USDA”)’s national organic production (“NOP”) Regulations, which were implemented in October 2002, organic groves may be separate from conventional groves, with enough of a “buffer zone” between the two to make sure synthetic pesticides and fertilizers do not reach an organic grove. However, the same tree can produce organic and non-organic oranges during its life cycle.⁴⁶ While organic oranges typically yield a higher Brix level, we have already established that purchasers view different forms of juice as comparable despite differences in Brix level. Like conventional FCOJM and NFC, organic FCOJM and NFC predominantly are used to produce single-strength orange juice for retail.⁴⁷

Interchangeability: USDA implemented NOP Regulations in October 2002. These NOP Regulations are the governing standards with respect to domestically produced organic FCOJM and NFC.⁴⁸ Because of NOP Regulations, purchasers of organic FCOJM and/or NFC intending to produce an organic retail product cannot substitute conventional FCOJM and/or NFC.⁴⁹ On the other hand, purchasers of conventional FCOJM do not typically substitute organic FCOJM and NFC because of the price premium associated with organic FCOJM and NFC.⁵⁰

Channels of Distribution: Organic-specific distributors typically sell their oranges to smaller juice processing plants, and organic orange juice is distributed to organic-certified retail warehouses.⁵¹ Some firms reported in their questionnaire responses that conventional and organic FCOJM and NFC have similar distribution channels while other firms reported that they do not.⁵² It is clear, however, that just like conventional bulk orange juice, bulk organic orange juice is used to produce a single-strength consumer product that is then predominantly distributed for retail sale in grocery stores that also sell conventional orange juice.⁵³ We find that, on balance, organic orange juice and conventional orange juice are sold in overlapping channels of distribution.

Common Manufacturing Facilities, Employees, and Methods: As explained above, while organic oranges must be grown on segregated trees according to special procedures, the same tree can produce organic and conventional oranges during its life cycle.⁵⁴ It is true that under the NOP Regulations, organic groves must be kept separate from conventional orange groves by at least 50 feet,⁵⁵ and those same regulations prohibit grove owners from using any synthetic pesticides or fertilizers for at least three

⁴⁵ CR at I-8; CR at Appendix D-23 to D-24; PR at I-6, D-23.

⁴⁶ CR at I-11 to I-12; PR at I-8.

⁴⁷ *Id.*

⁴⁸ CR at I-13; PR at I-9.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ CR at I-19; PR at I-13.

⁵² CR at Appendix D-25 to D-26; PR at Appendix D-24 to D-25.

⁵³ *Id.*

⁵⁴ CR at I-11 to I-12; PR at I-8.

⁵⁵ CR at I-11; PR at I- 8; Tr. at 206

years before they are permitted to market their fruit using the organic label.⁵⁶ But organic orange juice processors use the same production equipment as conventional FCOJM and NFC processors, and produce both conventional and organic orange juice on that equipment, albeit on different production runs.⁵⁷ Because of this, and the fact that organic and conventional oranges can be grown on the same tree during the tree's life cycle, we find, on balance, that organic and conventional FCOJM and NFC orange juice use common manufacturing equipment, employees, and methods.

Producer and Customer Perceptions: With respect to organic FCOJM and NFC, the record on producer and customer perceptions is very limited. Although some responding purchasers to the Commission's questionnaire reported that organic orange juice is perceived as healthier than conventional FCOJM and NFC,⁵⁸ these perceptions apply to the retail product rather than the wholesale product.

Price: Organic NFC carries a substantial price premium over conventional NFC, which was confirmed by the purchaser questionnaire responses received by the Commission.⁵⁹

Conclusion: With respect to organic FCOJM and NFC, the Commission received questionnaire responses from one domestic producer of organic orange juice⁶⁰ and a small number of U.S. purchasers. Thus, the information on the record in this investigation is rather limited with respect to organic orange juice. We have considered the six like product factors discussed above based on the available evidence, and we find that they weigh in favor of finding a single domestic like product. Absent any clear dividing line between conventional and organic orange juice, we find a single domestic like product consisting of conventional FCOJM, conventional NFC, organic FCOJM, and organic NFC, coextensive with Commerce's scope. Throughout the remainder of this opinion, we will call this domestic like product "certain orange juice."

II. DOMESTIC INDUSTRY AND RELATED PARTIES

A. In General

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."⁶¹ 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.⁶²

B. Whether The Domestic Industry Should Include 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:

⁵⁶ CR at I-11 to I-12; PR at I-8.

⁵⁷ *Id.*

⁵⁸ CR at Appendix D-26 to D-27; PR at Appendix D-25.

⁵⁹ CR/PR at Table I-4; CR at I-19; PR at I-13; CR at Appendix D-27 to D-28; PR at Appendix D-25 to D-26.

⁶⁰ Silver Spring is the only producer of organic orange juice that responded to Commission questionnaires. It accounted for *** of domestic production of certain orange juice in crop year 2004/05. Its share of production of organic orange juice is not known.

⁶¹ 19 U.S.C. § 1677(4)(A).

⁶² 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).

- (a) the processed agricultural product is produced from the raw product through a single continuous line of production,⁶³ and
- (b) there is a substantial coincidence of economic interest between the growers and producers of the processed product based upon the relevant economic factors.⁶⁴

In light of our domestic like product determination, the pertinent processed agricultural product is certain orange juice. The parties agree that the pertinent raw agricultural product is “round oranges.”⁶⁵

Respondents claim that the first prong of the grower/processor statute is not satisfied because an unspecified but “very significant” percentage of round oranges grown by Florida growers are sold as fresh fruit not processed into certain orange juice and because processors, not growers, decide whether round oranges are used to make FCOJM or NFC.⁶⁶ However, we find that the first prong of the grower/processor provision is satisfied because certain orange juice is produced from round oranges through a single, continuous line of production. The cost of raw materials, consisting of round oranges, comprised approximately 80 percent of the cost of goods sold of the domestic like product during the period examined.⁶⁷ Moreover, approximately 95 percent of Florida round oranges are processed into orange juice;⁶⁸ thus, Respondents’ contention that a “very significant” percentage of round oranges are sold into the fresh fruit market is not supported by record evidence. Indeed, the Commission has found

⁶³ 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:

- (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).

⁶⁴ 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).

⁶⁵ See Petitioners’ Postconference Br. at 18-19; Citrusuco Postconference Br. at 13-14; Hearing Tr. at 72 (Behr). There are two economically important types of oranges: round oranges and specialty oranges. “Round oranges” include navel, Hamlin, Parson Brown, Pineapple and Valencia oranges. The bulk of round oranges are processed into certain orange juice with most of the remainder (mainly navel oranges) sold for fresh eating. CR at I-9; PR at I-7. In the Commission’s 1987 frozen concentrated orange juice investigation, 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 (April 1987) at 11-12. 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.

⁶⁶ Tropicana Prehearing Br. at 23; Citrusuco Prehearing Br. at 2-3.

⁶⁷ CR/PR at V-1.

⁶⁸ CR/PR at III-1 n.2.

the substantially or completely devoted standard satisfied in other investigations (including a prior 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.⁶⁹

Respondents argue that the second prong of the grower/processor provision is not satisfied, claiming that growers have dissimilar economic interests than do processors because growers sell oranges for the highest possible price whereas processors attempt to buy oranges at the lowest possible price.⁷⁰ Respondents assert that the lack of economic integration between growers and processors is most evident by the lack of correlation between orange prices and prices for certain orange juice.⁷¹ However, we find that the second prong of the grower/processor provision is satisfied because record evidence shows a substantial coincidence of economic interest between orange growers and domestic producers of FCOJM and NFC.^{72 73} In this investigation, the record reflects that the vast majority of U.S. fresh oranges were sold through “participation plans,” with the remainder sold through cooperatives and the cash market.⁷⁴ These arrangements tie the economic interests of the growers and the processors together because they share financial risks.⁷⁵ Under a participation plan, a grower agrees to sell his oranges to an extractor in exchange for a return based on the final amount received by the extractor when the manufactured orange juice is sold. There are two types of participation plans, “full” participation plans and “partial” participation plans. The return received by growers involved in a full participation plan is determined almost solely by the final price received and the returns generated from the sales of orange juice produced from the growers’ oranges.⁷⁶ Growers in a partial participation plan receive a guaranteed “floor” price for their oranges at the time of delivery, and receive an additional payment (i.e., the so-called “participation price”) depending upon the profitability of the processing plant.⁷⁷

The commonality of economic interests between the growers and the processors is also illustrated by the fact that prices for oranges and prices for certain orange juice have shown similar patterns of

⁶⁹ 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) (including 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) (including 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).

⁷⁰ Tropicana Prehearing Br. at 28.

⁷¹ Id. at 27.

⁷² 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.

⁷³ The statute, in defining the determination of coincidence of economic interest, specifically states that the Commission, if taking into account the added market value, “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). In this case, the raw agricultural product, round oranges, constitutes more than 80 percent of the value of certain orange juice. As such, the statutory criteria for coincidence of economic interest are met.

⁷⁴ In crop year 2004/05, 70.4 percent of U.S. fresh oranges were sold through partial participation plans, *** percent were sold through full participation plans, 19.1 percent were sold through the cash market, and *** percent were sold through cooperatives. CR at III-4; PR at III-3.

⁷⁵ CR at III-4; PR at III-1.

⁷⁶ CR at III-4 n.10; PR at III-3, n.10.

⁷⁷ In the event that the participation price exceeds the floor price, the grower is paid the difference between the two. CR at III-4 n.10; PR at III-3, n.10.

increases and decreases over the period examined.⁷⁸ Growers testified that the market price which they received for their oranges was tied to the FCOJ futures price.⁷⁹ Moreover, as explained above, raw materials, most of which are round oranges, comprised approximately 80 percent of the cost of goods sold of the domestic like product during the period examined. That fact provides cooperatives and other buyers of fruit with an incentive to help growers lower production costs through higher yields and better management. Evidence that the cooperatives are economically linked to the growers in this manner can be found in the fact that cooperatives provide grove care, maintenance, and harvesting services to grower-members.⁸⁰

Having found both that the processed agricultural product is produced from the raw product through a single continuous line of production and that there is a substantial coincidence of economic interest between the growers of the raw product and producers of the processed product, we include growers of round oranges within the domestic industry producing certain orange juice.

C. Related Parties

Although Petitioners argued that four firms should be excluded from the domestic industry in the preliminary phase of the investigation, they did not argue in this final phase that the Commission should exclude any related parties from the domestic industry. Respondent Citrusuco, one of the domestic producers Petitioners originally sought to exclude, argues that it should be included in the domestic industry definition regardless of how the Commission defines the domestic like product.⁸¹

Regardless of whether Citrusuco N.A., Cutrale USA, Louis Dreyfus, and Cargill Juice North America (“Cargill USA”) qualify as related parties under 19 U.S.C. § 1677(4)(B), we do not find that appropriate circumstances exist to exclude any of these companies from the domestic industry.

Cutrale USA. In crop year 2004/05, Cutrale USA accounted for *** percent of domestic FCOJM production and *** percent of domestic NFC production.⁸² Cutrale USA’s ratio of total subject imports to domestic production was sometimes high during the investigation period. Cutrale USA’s ratio of total imports to domestic production was *** percent in crop year 2001/02, *** percent in crop year 2002/03, *** percent in crop year 2003/04, and *** percent in crop year 2004/05.⁸³ However, the record does not indicate that Cutrale USA derived significant financial benefits from a corporate relationship with its Brazilian parent or from its subject imports. Its financial results were *** the industry average for the final full year of the period examined (*i.e.*, 2004) and during interim 2005.⁸⁴ These were also the periods when subject imports were at their highest levels during the period examined. Cutrale USA opposes the Petition.⁸⁵

Louis Dreyfus. In crop year 2004/05, Louis Dreyfus accounted for *** percent of domestic FCOJM production and none of the domestic NFC production.⁸⁶ For Louis Dreyfus, its ratio of subject imports to domestic production was low during the period of investigation. Louis Dreyfus’s ratio of total imports to domestic production was *** percent in crop year 2001/02, *** percent in crop year 2002/03,

⁷⁸ CR/PR at V-1.

⁷⁹ Hearing Tr. at 22 (McKenna), 29 (Chapman), and 121 (Black).

⁸⁰ CR at III-4 n. 9; PR at III-1, n.9.

⁸¹ Citrusuco Posthearing Br. at 3-6.

⁸² *Id.*

⁸³ CR/PR at Table III-13.

⁸⁴ CR/PR at Table VI-4. The financial indicators of the domestic processors and growers are expressed on a fiscal year basis, which is typically expressed as one year (*e.g.*, 2004), rather than as two (*e.g.*, 2004/05).

⁸⁵ CR/PR at Table III-5.

⁸⁶ CR/PR at Table III-5.

*** percent in crop year 2003/04, and *** percent in crop year 2004/05.⁸⁷ The record does not indicate that Louis Dreyfus derived any significant financial benefits from a corporate relationship with its Brazilian sister company or from its subject imports. In fact, its financial results were *** the industry average during the investigation period.⁸⁸ Louis Dreyfus opposes the Petition.⁸⁹

Citrosuco N.A. In crop year 2004/05, Citrosuco N.A. accounted for *** percent of domestic FCOJM production and *** percent of domestic NFC production.⁹⁰ Citrosuco N.A.'s ratio of total subject imports to domestic production was sometimes high during the investigation period. For example, Citrosuco N.A.'s ratio of total imports to domestic production was *** percent in crop year 2001/02, *** percent in crop year 2002/03, *** percent in crop year 2003/04, and *** percent in crop year 2004/05.⁹¹ The record does not indicate that Citrosuco N.A. derived significant financial benefit from its related-party status. Its financial results were *** the industry average for the final full year of the period examined (i.e., 2004) and during interim 2005.⁹² These were also the periods when subject imports were at their highest levels during the period examined. Citrosuco N.A. opposes the Petition.⁹³

Cargill USA. During the period of investigation, Cargill USA was affiliated with a company that owned two orange juice processing plants and four orange groves in Brazil.⁹⁴ In July 2004, these Brazilian assets, along with certain fruit supply agreements, were sold to Citrosuco N.A. and Cutrale USA.⁹⁵ Cargill USA continues to own tanker ships for transporting orange juice.⁹⁶ In crop year 2004/05, Cargill USA accounted for *** percent of domestic FCOJM production and just *** percent of domestic NFC production.⁹⁷ Cargill USA's ratio of subject imports to domestic production is low. Cargill USA's ratio of total imports to domestic production was *** percent in crop year 2001/02, *** percent in crop year 2002/03, *** percent in crop year 2003/04, and *** percent in crop year 2004/05.⁹⁸ The record does not indicate that Cargill USA derived significant financial benefits from a corporate relationship with its Brazilian subsidiaries or from its subject imports. In fact, its financial results were *** the industry average for most of the period examined.⁹⁹ Cargill opposes the Petition.¹⁰⁰

Especially in light of our findings that these companies do not appear to have derived any significant financial benefits from their relationships with Brazilian operations and because Petitioners have not raised any related parties challenge in this final phase of the investigation, we include Citrosuco N.A., Cutrale USA, Louis Dreyfus, and Cargill USA in the domestic industry.¹⁰¹ Accordingly, we define the domestic industry to include both orange growers and all domestic extractors/processors of certain orange juice.

⁸⁷ CR/PR at Table III-13.

⁸⁸ CR/PR at Table VI-4.

⁸⁹ CR/PR at Table III-5.

⁹⁰ Id.

⁹¹ CR/PR at Table III-13.

⁹² CR/PR at Table VI-4.

⁹³ CR/PR at Table III-5.

⁹⁴ Id.

⁹⁵ Id.

⁹⁶ Id.

⁹⁷ Id.

⁹⁸ CR/PR at Table III-13.

⁹⁹ CR/PR at Table VI-4.

¹⁰⁰ CR/PR at Table III-5.

¹⁰¹ We note that, while each of these companies also purchased subject imports at certain times during the period of investigation, their purchases likewise do not provide a basis for excluding them under the related parties provision. CR/PR at Table III-13.

III. MATERIAL INJURY BY REASON OF THE SUBJECT IMPORTS¹⁰²

A. General Legal Standards

In the final phase of antidumping or countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.¹⁰³ 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.¹⁰⁴ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”¹⁰⁵ 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.¹⁰⁶ 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.”¹⁰⁷

For the reasons stated below, we determine that the domestic industry producing certain orange juice is materially injured by reason of subject imports from Brazil.

B. Conditions of Competition

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

1. Supply Conditions

There are currently 20 extractor-processors producing certain orange juice in the United States. Because there is no economical way to import oranges, domestic processors are wholly dependent on U.S. (mostly Florida) growers for their supply of oranges. Orange juice processors face significant year-to-year fluctuations in the supply of their primary input, round oranges. These fluctuations result from both weather conditions (e.g., freezes, hurricanes, and droughts) and other factors including citrus diseases (e.g., Citrus Canker and Citrus Greening). 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. However, in the aftermath of Hurricanes Charley, Frances, and Jeanne, which struck Florida’s orange groves in the late summer and early fall of 2004, the Florida orange crop declined to 149.6 million boxes in crop year 2004/05.¹⁰⁸ Florida orange growers reported that the 2004 and 2005 Florida hurricanes resulted in both

¹⁰² 19 U.S.C. § 1677(24)(A)(i)(I). In this final phase investigation, subject imports from Brazil 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).

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

¹⁰⁴ 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).

¹⁰⁵ 19 U.S.C. § 1677(7)(A).

¹⁰⁶ 19 U.S.C. § 1677(7)(C)(iii).

¹⁰⁷ 19 U.S.C. § 1677(7)(C)(iii).

¹⁰⁸ The size of the total domestic orange crop decreased from 283.8 million boxes in crop year 2001/02 to 267 million boxes in crop year 2002/03, increased to 294.6 million boxes in crop year 2003/04, and dropped to

(continued...)

significant crop damage and the spread of citrus diseases, making it necessary to replant a substantial number of orange trees.¹⁰⁹ In the aftermath of Hurricane Wilma, which struck Florida in the fall of 2005, it is projected that the size of the Florida orange crop will recover only moderately to 190 million boxes in crop year 2005/06.¹¹⁰

Supply of certain orange juice is a function of inventories as well as crop size. Due to the inherent volatility in the domestic supply of round oranges, domestic producers of certain orange juice maintain relatively large bulk juice inventories. Based on USDA data, during the period examined, the size of the U.S. inventory of certain orange juice represented approximately one-half of domestic production in any given crop year.¹¹¹

Aside from domestic production and inventories, the second largest source of supply to the U.S. market is Brazil. Brazil is the world's largest orange juice producer and exporter.¹¹² Because there is very little domestic demand for commercially processed orange juice in Brazil, Brazil's orange juice industry is export-oriented.¹¹³ Brazil supplies 84 percent of the global orange juice market, and Brazilian firms have invested substantial sums in building a fleet of tankers used solely to transport certain orange juice.¹¹⁴ The four major Brazilian producers, with the exception of Montecitrus, have wholly-owned or related U.S. processing affiliates.¹¹⁵ Brazilian processors have not invested, however, in U.S. orange groves. The orange juice industry in Brazil is highly concentrated, with four firms (Coinbra, Cutrale, Citrosuco, and Montecitrus) accounting for approximately 85 percent of total Brazilian production of subject merchandise in crop year 2004/05.¹¹⁶

There are seasonal differences between the orange crop harvest in the United States and Brazil.¹¹⁷ Due to geographic and climate differences, Brazil's harvest season for growing oranges used for processing FCOJM and NFC begins and finishes earlier than in the United States. Brazil's harvest season begins in July, three months earlier than in the United States, and finishes in January, five months earlier than in the United States.¹¹⁸ Once produced, Brazilian juice can be shipped to customers, held in inventory in Brazil, or held in importers' storage tanks in the U.S. or third countries.

In this investigation, Commerce's scope is limited and covers only five Brazilian firms that produce subject merchandise.¹¹⁹ As discussed below, nonsubject imports, both from Brazil and from

¹⁰⁸ (...continued)

212.8 million boxes in crop year 2004/05. CR/PR at Table III-2.

¹⁰⁹ CR at III-3; PR at III-1. Bearing acreage for Florida orange growers dropped from 586,900 acres in crop year 2001/02 to 541,800 thousand acres in crop year 2004/05. CR/PR at Table III-2.

¹¹⁰ CR/PR at Table III-4; Petitioners' Prehearing Br. at 9-10.

¹¹¹ The ratio of domestic producers' carryover stocks to U.S. production increased from 48.3 percent in crop year 2001/02 to 56.5 percent in crop year 2002/03 to 57.2 percent in crop year 2003/04 to 58.6 percent in crop year 2004/05. CR/PR at Table III-15.

¹¹² CR at VII-2; PR at VII-2.

¹¹³ Id.

¹¹⁴ CR at VII-5 & VII-7; PR at VII-4 & VII-7.

¹¹⁵ CR/PR at Table III-5.

¹¹⁶ CR at VII-5; PR at VII-4. Cutrale is Brazil's largest producer (***) percent) followed by Fischer/Citrosuco (***) percent). CR at VII-5 to VII-7; PR at VII-6.

¹¹⁷ Hearing Tr. at 161 (Chapman), 171 (McGrath), 217 (Warlick), 236-237 (Freeman), and 324 (Zellner).

¹¹⁸ Petitioners' Prehearing Br. at 39.

¹¹⁹ The Department of Commerce has defined the imported merchandise subject to investigation as follows: "the scope with regard to FCOJM covers only FCOJM produced and/or exported by those companies which were excluded or revoked from the existing antidumping order on FCOJ from Brazil as of December 27, 2004. Those companies are Cargill [Citrus Limitada], Coinbra-Frutesp, [Succocitrico] Cutrale [SA], Fischer, and Montecitrus (continued...)"

other countries, increased slightly overall during the period examined, although they held a smaller presence in the U.S. market than either the domestic like product or subject imports.¹²⁰

2. Demand Conditions

The United States is the largest consumer of orange juice in the world.¹²¹ Domestic demand for certain orange juice is primarily a function of demand for downstream products using FCOJM and NFC, predominantly retail orange juice.¹²² The parties all agreed that the popularity of low carbohydrate diets during the period examined reduced demand for orange juice. Nevertheless, record data indicate that apparent U.S. consumption of the domestic like product increased modestly over the period examined. Apparent U.S. consumption fell from 1.45 billion gallons single-strength equivalent (SSE) in crop year 2001/02 to 1.43 billion gallons SSE in crop year 2002/03 before increasing slightly to 1.44 billion gallons SSE in crop year 2003/04, and increasing to 1.50 billion gallons SSE in crop year 2004/05,¹²³ for an overall increase of 3.5 percent.

3. Blending

Blending is a common practice in the manufacture of retail orange juice. Blending is mostly done by extractor/processors, although it can also be done by downstream reconstituters and repackagers. There is disagreement among the parties regarding the reasons for the blending or whether a blend of domestic and imported juice is necessary.

The record indicates that blending serves several purposes. Different varieties of round oranges, or even the same variety at different stages of ripeness, can produce juice with varying color, viscosity, or other characteristics. Blending permits producers to manufacture orange juice of consistent quality to satisfy USDA, industry standards and customer preferences. In addition, blending allows producers to satisfy country of origin labeling requirements at the retail level, because they can use a single package label regardless of the relative percentages of domestic and Brazilian juice in the blend.¹²⁴

Petitioners and Respondents disagree about whether subject imports are needed for blending with the domestic like product in order to standardize color, grade, and viscosity 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. By contrast, Respondents assert that the domestic like product and subject imports are not substitutable,

¹¹⁹ (...continued)

[Industria e Comercio Limitada].” 71 F.R. 2183 at 2184 (Jan. 13, 2006). Commerce also has determined that Coinbra is the successor-in-interest to Frutropic. CR at I-6 n.10; PR at I-5 n.10. Product from Brazilian producer Citrovita is counted as nonsubject merchandise because the firm is not covered by the scope of the investigation as defined by Commerce. 71 F.R. 2183 (January 13, 2006).

¹²⁰ CR/PR at Table IV-2. Other than Brazilian nonsubject imports, the primary sources of nonsubject imports during the period examined included Belize, Costa Rica, Honduras, Mexico, South Africa, and the Dominican Republic. CR at IV-3 n.8; PR at IV-4 n. 8. Nonsubject imports from these other countries accounted for 5.2 percent of U.S. market share for certain orange juice in crop year 2001/02, 4.2 percent of U.S. market share for certain orange juice in crop year 2002/03, 4.5 percent of U.S. market share for certain orange juice in crop year 2003/04, and 8.0 percent of U.S. market share for certain orange juice in crop year 2004/05. CR/PR at Table IV-5.

¹²¹ CR at IV-9; PR at IV-7.

¹²² CR at II-4; PR at II-3.

¹²³ CR/PR at Table IV-5.

¹²⁴ Hearing Tr. at 299-300 (Freeman).

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.¹²⁵

The majority of U.S. purchasers – 13 out of 23 – reported that Brazilian subject imports are not needed for blending with domestically produced certain orange juice.¹²⁶ We also note that all 15 responding U.S. purchasers’ reported that the domestic like product and subject imports are comparable in terms of USDA grade and viscosity.¹²⁷ Furthermore, 11 out of 18 responding U.S. purchasers reported that domestically produced certain orange juice and subject imports from Brazil are “always” or “frequently” interchangeable.¹²⁸

While blending is a common practice in this industry, we find, based upon U.S. purchaser and other questionnaire responses,¹²⁹ along with other evidence in the record,¹³⁰ that subject imports are not necessary for blending with the domestic like product in order to produce a product that will satisfy viscosity, color, and grade standards. Instead, as we discuss further below, we find the more relevant question is not whether subject imports are needed for blending, but to what extent they are needed to satisfy the volume of U.S. demand for certain orange juice.

C. 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.”¹³¹ For the reasons discussed below, we find the absolute volume of subject imports to be significant and we also find 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, to be significant.

By quantity, subject imports increased by 122.0 million gallons SSE¹³² or 111.2 percent during the period examined.¹³³ The parties agree, and the record confirms, that imports of orange juice are

¹²⁵ Hearing Tr. at 236-237 (Freeman) and 244 (Frielich).

¹²⁶ See U.S. Purchasers’ Questionnaires at Section IV-8.

¹²⁷ CR/PR at Table II-8.

¹²⁸ CR/PR at Table II-6; CR at II-14; PR at II-10.

¹²⁹ CR/PR at Table II-5.

¹³⁰ At the hearing, one of Petitioners’ witnesses, Dr. Robert Behr, stated as follows: “One of the arguments the Respondents will make is that Brazilian orange juice is needed because it provides viscosity for dispenser application. This argument is simply not true. Our company uses 100 percent low viscosity Florida FCOJ to supply many of its dispenser customers, and we compete in the same markets as the other leading manufacturers such as Vitality. You will hear that Brazilian orange juice provides necessary color, but you won’t hear supporting evidence. The Florida Citrus Processors Association reports that the average color score for FCOJ and NFC produced from Florida oranges during the last two seasons are more than sufficient to meet U.S. needs.” Hearing Tr. at 45. Dr. Behr also stated as follows: “I think the bottom line is that we’re not here suggesting that we don’t need imports. This industry, this market has historically had imports typically when the Florida crop is short. We’re not here to stop that, but to argue that we need imports for color, or viscosity, or for other reasons is just simply not true.” *Id.* at 88.

¹³¹ 19 U.S.C. § 1677(7)(C)(i).

¹³² A pound solid is a basic and standardized measurement of the amount of dissolved citrus sugar found in juice. SSE gallons are a standard volume measurement for orange juice at a ready-to-drink concentration level of 11.8 Brix. One gallon of SSE orange juice of 11.8 degrees Brix is equivalent to 1.029 pounds solids.

¹³³ The quantity of subject imports increased from 109.7 million gallons SSE in crop year 2001/02 to 227.3 million gallons SSE in crop year 2002/03, dropped to 154.2 million gallons SSE in crop year 2003/04, and increased to 231.7 million gallons SSE in crop year 2004/05. By value, subject imports increased from \$99.2 million (continued...)

necessary to meet domestic demand. It is not surprising, therefore, that the greatest annual increases in subject imports occurred in crop years 2002/03 and 2004/05, when U.S. shipments were at their lowest levels during the period examined.¹³⁴

Subject imports' share of the U.S. market more than doubled during the period examined, increasing by 7.9 percentage points overall.¹³⁵ Subject imports' share of the U.S. market climbed from 7.6 percent in crop year 2001/02 to 15.9 percent in crop year 2002/03, dropped to 10.7 percent in crop

¹³³ (...continued)

in crop year 2001/02 to \$242.3 million in crop year 2002/03, dropped to \$142.7 million in crop year 2003/04, and increased to \$232.5 million in crop year 2004/05. CR/PR at Table IV-2.

Respondents argue that the Commission should use a three-year period of investigation between crop year 2002/03 and crop year 2004/05 rather than a four-year period of investigation between crop year 2001/02 and crop year 2004/05. See Louis Dreyfus and Cutrale Prehearing Br. at 53-54. Respondents state that it is customary Commission practice for the Commission to use a three-year period of investigation and they also argue that the Commission should not use crop year 2001/02 as the starting period for the period examined because (according to Respondents) that crop year was "an aberrational year for imports from Brazil" with historically low levels. Id. at 54-55. Respondents also contend that the Commission's selection of a four-year period of investigation is arbitrary and that the Commission could have used an even longer period of investigation such as five years. Id. at 56.

The Commission has discretion to set its period of investigation. Bratsk Aluminum Smelter v. United States, ___ F. Supp. 2d ___, slip op. 04-75 (Ct. Int'l Trade June 22, 2004) at 14-15, appeal docketed, No. 05-1213 (Fed. Cir. Feb. 4, 2005) ("The statute . . . does not direct the ITC to use a specific period of time for its analysis . . . [but] 'in making a present material injury determination, the Commission must address record evidence of significant circumstances and events that occur between the petition date and vote date' . . . [recognizing] that 'older information on the record provides a historical backdrop against which to analyze fresher data.'") (internal citations omitted). While the Commission typically gathers data for the most recent three full years, plus the most recent interim period, it has on occasion deviated from doing so, when, for example, conditions of competition for the industry warrant such a deviation. The Commission has examined longer time periods where it found that an examination of the longer time period would better allow it to understand the conditions in the market, the cyclical nature of an industry, or generally provide it with a broader perspective of the market. See, e.g., Fresh Atlantic Salmon from Chile, Inv. No. 731-TA-768 (Final), USITC Pub. 3116 (July 1998), at 14; Portable Electric Typewriters from Singapore, Inv. No. 731-TA-515 (Final), USITC Pub. 2681 (September 1993), at 11; Gray Portland Cement and Cement Clinker from Japan, Inv. No. 731-TA-461 (Final), USITC Pub. 2376 (April 1991), at 28; Gray Portland Cement and Cement Clinker from Japan, Inv. No. 731-TA-451 (Final), USITC Pub. 2305 (August 1990).

We found that in this industry, which is subject to unpredictable domestic production cycles due to natural factors such as hurricanes, frost, and disease, there does not appear to be a "normal" baseline year for import levels. Agricultural products (including certain orange juice) often face natural production cycles. See S. Rep. No. 249, 96th Cong. 1st Sess. 88 (1979) ("Because of the special nature of agriculture, including the cyclical nature of much of agriculture production, special problems exist in determining whether an agricultural industry is materially injured.").

Consequently, the Commission found it more reliable to gather industry data for crop years October 2001 through September 2002, October 2002 through September 2003, October 2003 through September 2004, and October 2004 through September 2005 in order to assess any apparent cyclicity and the unpredictable nature of domestic production. The financial data collected by the Commission are compiled on a different basis but covered a period that closely corresponded to the period covered by the industry data. The financial data were for full fiscal years within the period January 2002 through September 2005, a difference of only 3 months (October-December 2001) from the industry data period. See CR/PR at VI-1, n.1.

Moreover, Respondents did not object in their questionnaire comments to the collection of data for the period of investigation proposed in the Commission's draft questionnaires. Respondents also did not propose any alternative (shorter or longer) period of investigation in their questionnaire comments.

¹³⁴ CR/PR at Table IV-2.

¹³⁵ CR/PR at Table IV-5.

year 2003/04, and climbed to 15.4 percent in crop year 2004/05.¹³⁶ Although nonsubject imports' share of the U.S. market increased overall by 2.8 percentage points during the period examined, subject imports gained far more market share at the expense of the domestic industry than did nonsubject imports.¹³⁷ Domestic producers' share of the U.S. market declined overall by 10.7 percentage points during the period examined.¹³⁸ The ratio of subject imports to domestic production increased by *** percentage points during the period examined.¹³⁹

Regardless of the period examined, we find the volume of subject imports to be significant. Although we examined the longer-term data supplied by Respondents, our finding that the volume of subject imports is significant does not depend upon an "arbitrary" selection of crop year 2001/02 as the start date for the period examined, but rather upon our assessment that Brazilian subject imports increasingly exceeded residual demand throughout the period examined. Furthermore, we note that subject imports rose sharply in the most recent crop years from 154.2 million pounds solids in crop year 2003/04 to 231.7 million pounds solids in crop year 2004/05.¹⁴⁰

Respondents argue that despite their absolute increase and rising U.S. market share, the volume of subject imports is not significant for three reasons: (1) imports are necessary for blending to bring domestic juice up to industry standards; (2) domestic producers need exports to gain drawback credits that make export sales profitable; and (3) imports meet demand that the domestic industry cannot produce enough juice to satisfy. Respondents contend that in every year of the period examined, these three purposes account for the entire volume of Brazilian imports. Moreover, Respondents allege that such imports have no injurious effects on the domestic industry as a direct consequence of the purposes for which they were imported.

As noted above, we find that Respondents' assertion that a certain volume of imports is "needed" for blending is misleading. While it is true that domestic apparent consumption sometimes exceeds domestic supply, making some volume of imports necessary, the evidence does not establish that blending of domestic and imported juices is necessary to meet customer quality standards.¹⁴¹ By statute, we must assess the total import volume over the period examined. We therefore do not differentiate between subject import volume used for blending and subject import volume needed to meet consumer demand or for other reasons. Consequently, we cannot simply disregard any volumes of Brazilian juice that are blended with domestic juice.

We similarly find no record support for Respondents' contention that some imports from Brazil are necessary to permit domestic export sales. The record indicates that drawback credits from Brazilian imports are not driving domestic export sales. As an accounting matter, duty drawback can only be collected after import duties have been paid, thereby providing no net benefit for exporters. Moreover, the fact that the value of drawback credits available significantly exceeds the value of domestic exports

¹³⁶ Id.

¹³⁷ Nonsubject imports' U.S. market share fell from 5.2 percent in crop year 2001/02 to 4.2 percent in crop year 2002/03, increased to 4.5 percent in crop year 2003/04, and increased again to 8.0 percent in crop year 2004/05. Id.

¹³⁸ Domestic producers' U.S. market share dropped from 87.2 percent in crop year 2001/02 to 79.9 percent in crop year 2003/04, increased to 84.8 percent in crop year 2004/05, and fell to 76.5 percent in crop year 2004/05. Id.

¹³⁹ The ratio of subject imports to domestic production increased from 7.7 percent in crop year 2001/02 to 18.2 percent in crop year 2002/03, declined to 10.5 percent in crop year 2003/04, and climbed to 23.0 percent in crop year 2004/05. CR/PR at Table IV-7.

¹⁴⁰ CR/PR at Table IV-2.

¹⁴¹ CR/PR at Table II-8.

demonstrates that there is limited, if any, correlation between domestic exports and the availability of drawback credits.¹⁴²

Finally, Respondents argue that subject imports are at most a residual source of supply in the U.S. market to cover domestic production shortfalls, especially following the 2004 Florida hurricanes.¹⁴³ The record does show that Brazilian subject imports tend to rise in years when Florida production falls and vice-versa.¹⁴⁴ In our view, however, this simple comparison of import and production trends masks important changes in the supply/demand balance in the U.S. market over the total period examined.

As noted above, inventories of both domestic and Brazilian bulk product are significant supply factors. As shown in the table below, the record indicates that the amount of Brazilian subject imports held in U.S. inventory increased during the period examined, thereby exceeding the volume of imports necessary to counter domestic production shortfalls.¹⁴⁵

¹⁴² Louis Dreyfus & Cutrale Prehearing Br. at 12-14. 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-22 & III-27; PR at III-18. Respondents contend that Brazilian subject imports are needed by the domestic industry not just for blending but also for duty drawback credit. Louis Dreyfus & Cutrale Prehearing Br. at 15-16, 58-59. We note, however, that domestic producers' U.S. shipments dwarfed U.S. producers' export shipments in terms of both quantity and value during the period examined. By quantity, domestic producers' U.S. shipments of certain orange juice totaled 1.3 billion pounds solids in crop year 2001/02, 1.2 billion pounds solids in crop year 2002/03, 1.3 billion pounds solids in crop year 2003/04, and 1.0 billion pounds solids in crop year 2004/05. CR/PR at Table III-11. By value, domestic producers' U.S. shipments totaled \$1.3 billion in crop year 2001/02, \$1.2 billion in crop year 2002/03, \$1.3 billion in crop year 2003/04, and \$1.1 billion in crop year 2004/05. CR/PR at Table III-11. By quantity, U.S. producers' export shipments of certain orange juice totaled 118.1 million pounds solids in crop year 2001/02, 50.8 million pounds solids in crop year 2002/03, 74.3 million pounds solids in crop year 2003/04, and 61.5 million pounds solids in crop year 2004/05. *Id.* By value, U.S. producers' export shipments totaled \$132.1 million in crop year 2001/02, \$57.7 million in crop year 2002/03, \$71.2 million in crop year 2003/04, and \$56.6 million in crop year 2004/05. *Id.* Moreover, the statute directs the Commission to assess the significance of subject imports and their price effects on the prices for the domestic like product. The motives for importation, whether for duty drawback or other purposes, are not generally germane to our assessment of the effects of imports on the domestic industry.

¹⁴³ Louis Dreyfus & Cutrale Prehearing Br. at 61-63. To the extent that Respondents have argued that the Commission is legally unable to make an affirmative finding of material injury by reason of subject imports because the domestic industry was incapable of supplying domestic demand after the 2004 Florida hurricanes, they are incorrect. Indeed, the Commission has noted that "there is no short supply provision in the statute" and "the fact that the domestic industry may not be able to supply all of demand does not mean the industry may not be materially injured or threatened with material injury by reason of subject imports." Softwood Lumber from Canada, Inv. Nos. 701-TA-414 and 731-TA-928 (Article 1904 NAFTA Remand) at 108, n. 310 (December 2003). See also Certain Lined Paper School Supplies, Inv. Nos. 701-TA-442-443 (Preliminary) and 731-TA-1095-1097 (Preliminary), USITC Pub. 3811 (October 2005) at 23, n. 155; Metal Calendar Slides from Japan, Inv. No. 731-TA-1094 (Preliminary), USITC Pub. 3792 (August 2005) at 9, n. 45.

¹⁴⁴ In crop year 2001/02, domestic production of certain orange juice totaled 1.41 billion pounds solids while apparent U.S. consumption totaled 1.45 billion pounds solids. In crop year 2002/03, domestic production of certain orange juice totaled 1.23 billion pounds solids while apparent U.S. consumption totaled 1.43 billion pounds solids. In crop year 2003/04, domestic production of certain orange juice totaled 1.47 billion pounds solids while apparent U.S. consumption totaled 1.44 billion pounds solids. In crop year 2004/05, domestic production of certain orange juice totaled 965.4 million pounds solids while apparent U.S. consumption totaled 1.50 billion pounds solids. CR/PR at Table IV-5.

¹⁴⁵ Derived from CR/PR at Tables C-3 and IV-5.

	<u>2001/02</u>	<u>2002/03</u>	<u>2003/04</u>	<u>2004/05</u>
U.S. importers' Brazilian inventory (1,000 gallons SSE)	33,791	41,795	26,633	51,312
U.S. ending stocks (1,000 gallons SSE)	692,163	704,509	842,139	590,000
Brazilian import inventory/U.S. ending stocks	4.9%	5.9%	3.2%	8.7%

Brazilian imports increased from 4.9 percent of U.S. ending stocks in crop year 2001/02 to 8.7 percent of U.S. ending stocks in crop year 2004/05.¹⁴⁶ Also, U.S. importers' end-of-period inventories of Brazilian subject merchandise increased from 33.8 million gallons SSE in crop year 2001/02 to 51.3 million gallons SSE in crop year 2004/05.¹⁴⁷ These data indicate that more Brazilian subject product is entering the United States than is necessary to remedy a supply shortfall.¹⁴⁸ In other words, while some volume of Brazilian product is being pulled into the U.S. market to meet demand, additional volume is being held in the United States for future sale in the form of inventories. As discussed below, these inventories, the build-up of which is not correlated with real or projected U.S. supply fluctuations, overhang the market and are having significant price-suppressing effects on the domestic industry.

For the above reasons, we find that subject import volume is significant, both in absolute terms and relative to domestic production and consumption.

D. 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.¹⁴⁹

The domestic market for certain orange juice is competitive and price-sensitive. Eleven out of 18 U.S. purchasers reported in their questionnaire responses that subject imports and the domestic like product are either “always” or “frequently” interchangeable.¹⁵⁰ Other market participants reported almost evenly in their questionnaire responses that subject imports and the domestic like product are “frequently” or “always” or “sometimes” interchangeable.¹⁵¹ Although most U.S. purchasers ranked quality as the most important factor in purchasing decisions, available data do not suggest significant quality

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ While the volume of U.S. importers' end-of-period inventories of Brazilian subject product is significant, data on the record may understate the actual inventories of subject imports available in the United States during the period examined. Petitioners note that there is a large discrepancy between the amount of inventories reported in the Staff Report and the inventories reported by the USDA. They contend that at least some of the under-reported inventories are held by U.S. processors in the United States as juice blended from orange juice of Brazilian-origin or sold by ***. CR/PR at Table VII-8; Petitioners' Final Comments at 9-10 and Attachment 6.

¹⁴⁹ 19 U.S.C. § 1677(7)(C)(ii).

¹⁵⁰ CR/PR at Table II-6.

¹⁵¹ CR/PR at Table II-5.

distinctions between the domestic like product and subject imports. Most U.S. purchasers ranked price as the second most important factor in their purchasing decisions.¹⁵²

The pricing data in this final phase of the investigation were requested for one conventional FCOJM product, one conventional NFC product, and one organic FCOJM product. Almost all 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.¹⁵³ Approximately *** percent of Brazilian FCOJM subject imports and *** percent of Brazilian NFC subject imports are also covered by responses.¹⁵⁴

The pricing data indicate significant underselling of the domestic like product by the subject merchandise. FCOJM (Product 1) accounted for the overwhelming majority of subject imports, by volume, during the period examined and totaled more than 90 percent of subject imports in each year. FCOJM subject imports undersold domestically produced FCOJM in 41 out of 48 quarterly comparisons, with margins of underselling averaging 8.2 percent.¹⁵⁵ Although we note that the comparisons for NFC (Product 2) show numerous instances of overselling, we find the overall underselling to be significant because FCOJM subject imports dwarfed NFC subject imports, which accounted for less than 10 percent of subject imports by volume during the period examined.¹⁵⁶ We also find this underselling to be significant because domestically produced FCOJM represented a substantial volume of domestic sales during the period examined.¹⁵⁷

¹⁵² CR/PR at Table II-2. With respect to U.S. purchasers' ranking of factors used in purchasing decisions, quality was ranked first by 16 purchasers, ranked second by 3 purchasers, and ranked third by 0 purchasers. Price was ranked first by 1 purchaser, ranked second by 9 purchasers, and ranked third by 10 purchasers. Twenty-three out of 26 U.S. purchasers reported that price was "very important" as a factor in their purchasing decisions. CR/PR at Table II-3.

¹⁵³ CR at V-6; PR at V-4.

¹⁵⁴ CR at V-6; PR at V-4.

¹⁵⁵ CR at V-15; PR at V-8.

¹⁵⁶ Brazilian FCOJM subject imports totaled 104.9 million gallons SSE in crop year 2001/02, 206.1 million gallons SSE in crop year 2002/03, 142.4 million gallons SSE in crop year 2003/04, and 209.6 million gallons SSE in crop year 2004/05. By contrast, Brazilian NFC subject imports totaled 4.9 million gallons SSE in crop year 2001/02, 21.2 million gallons SSE in crop year 2002/03, 11.8 million gallons SSE in crop year 2003/04, and 22.1 million gallons SSE in crop year 2004/05. By landed, duty-paid value, FCOJM subject imports totaled \$90.3 million in crop year 2001/02, \$205.7 million in crop year 2002/03, \$127.4 million in crop year 2003/04, and \$200.0 million in crop year 2004/05. By landed, duty-paid value, NFC subject imports totaled \$8.8 million in crop year 2001/02, \$36.6 million in crop year 2002/03, \$15.3 million in crop year 2003/04, and \$32.5 million in crop year 2004/05. CR/PR at Table IV-2.

¹⁵⁷ By quantity, U.S. producers' FCOJM shipments totaled 936.8 million pounds solids and U.S. producers' NFC shipments totaled 519.9 million pounds solids in crop year 2001/02. By quantity, U.S. producers' FCOJM shipments totaled 668.3 million pounds solids and U.S. producers' NFC shipments totaled 577.0 million pounds solids in crop year 2002/03. By quantity, U.S. producers' FCOJM shipments totaled 862.6 million pounds solids and U.S. producers' NFC shipments totaled 560.6 million pounds solids in crop year 2003/04. By quantity, U.S. producers' FCOJM shipments totaled 515.0 million pounds solids and U.S. producers' NFC shipments totaled 595.1 million pounds solids in crop year 2004/05. By value, U.S. producers' FCOJM shipments totaled \$808.6 million and U.S. producers' NFC shipments totaled \$654.9 million in crop year 2001/02. By value, U.S. producers' FCOJM shipments totaled \$575.2 million and U.S. producers' NFC shipments totaled \$730.0 million in crop year 2002/03. By value, U.S. producers' FCOJM shipments totaled \$690.3 million and U.S. producers' NFC shipments totaled \$702.0 million in crop year 2003/04. By value, U.S. producers' FCOJM shipments totaled \$426.0 million and U.S. producers' NFC shipments totaled \$733.9 million in crop year 2004/05. CR/PR at III-11.

Respondents argue that this underselling is not significant because it is attributable to certain long-term contracts.¹⁵⁸ However, the fact that an importer contracted in advance for a price that then undersells the domestic like product over a long period does not mean underselling is not occurring or has no adverse effects on U.S. market prices.¹⁵⁹ Moreover, while Respondents assert that Brazilian juice sells at a modest discount compared to the highest-quality, 100-percent Valencia domestic product, there is no record evidence that the Brazilian certain orange juice for which pricing data were reported is of lower quality and value than the domestic product for which we collected pricing data. We therefore conclude that the underselling is significant.

We also find that subject import prices are suppressing domestic price increases, which otherwise would have occurred, to a significant degree.¹⁶⁰ While the unit cost of goods sold (“COGS”) for domestic processors has risen slightly,¹⁶¹ the domestic industry’s ratio of COGS to net sales has steadily increased throughout the period examined.¹⁶² This indicates that the domestic industry has been unable to recoup its rising production costs through higher prices on its sales of the domestic like product. Respondents concede that, in light of the hurricanes and citrus diseases that have significantly reduced domestic production in crop years 2004/05 and 2005/06, prices in the U.S. market should be rising. They contend, however, that it is not reasonable for the Commission to find that domestic prices would have been even higher than they are, absent the current volume and lower prices of Brazilian imports, because any greater price increases would raise retail prices to the point where U.S. consumers begin to reduce their orange juice purchases.¹⁶³ This theory is not supported by the record, because Respondents are confusing wholesale and retail prices. The record indicates a growing gap between wholesale prices (*i.e.*, prices for the domestic like product) and retail orange juice prices over the period examined.¹⁶⁴ In general, the former have declined while the latter have increased somewhat. We therefore find that prices for the domestic like product could be considerably higher without impacting retail prices at all.

Rather than looking to demand factors to explain the domestic industry’s inability to raise prices commensurate with rising production costs, we find that this cost-price squeeze is attributable to the

¹⁵⁸ See, e.g., Louis Dreyfus & Cutrale Posthearing Br. at 11.

¹⁵⁹ The record indicates that long-term purchase contracts in the domestic orange juice industry do not leave prices locked in place for any significant length of time, nor do the contract prices mandate continual underselling of the domestically produced FCOJM. For example, in its posthearing brief, Respondent Citrusuco explains as follows: “In the case of Citrusuco’s FCOJM long-term contracts, the terms generally include pricing mechanisms that are linked to the futures market. These mechanisms are designed to insulate the contracting parties from the huge price swings that can occur over the length of the contract. The average price adjustments allow the contracting parties to manage their markets with a fair amount of price stability.” Citrusuco Posthearing Br. at 10. Price stability within a long-term contract would normally lead to at least some overselling in periods where the prevailing cash price was falling. However, throughout the period examined, whether the prevailing cash price of FCOJM was rising or falling, underselling by FCOJM subject imports continued to occur.

¹⁶⁰ Despite this significant underselling, we do not find that subject import prices are depressing domestic prices for certain orange juice. Over the period examined, prices for the domestic like product have fluctuated and even increased in some instances. CR/PR at Tables V-1 to V-3.

¹⁶¹ The domestic industry’s COGS declined from \$0.76 per pound in 2002 to \$0.72 per pound in 2003, recovered to \$0.77 per pound in 2004, and increased from \$0.64 per pound in interim 2004 to \$0.81 per pound in interim 2005. CR/PR at Table VI-9. The financial indicators of the domestic processors and growers are expressed on a fiscal year basis, which is typically expressed as one year (*e.g.*, 2004), rather than as two (*e.g.*, 2004/05).

¹⁶² The record reflects that the domestic industry’s COGS as a share of net sales steadily increased from 90 percent in 2002 to 92.9 percent in 2003 and then to 96.3 percent in 2004. COGS as a share of net sales steadily increased from 87.7 percent in interim 2004 to 93.5 percent in interim 2005. CR/PR at Table VI-9.

¹⁶³ See, e.g., Louis Dreyfus & Cutrale Posthearing Br. at 8-10.

¹⁶⁴ See, e.g., Petitioners’ Prehearing Br. at 43 & Attachment F; Hearing Tr. at 166 (Warlick), 261-262 (Brenner). This gap appears to be a function of the growing market power of large retail grocers as the grocery industry consolidates.

volume of Brazilian imports entering the U.S. at lower than market prices. In fact, the domestic industry's cost-price squeeze accelerated in the final year of the period examined, when Brazilian subject imports were at their highest levels. Between 2003 and 2004, the cost-price squeeze resulted in a 7.8 percentage point decline in the domestic industry's operating margin, which was more accelerated than the 1.8 percentage point drop in the domestic industry's operating margin between 2002 and 2003, when the domestic industry also experienced a cost-price squeeze.¹⁶⁵

The increase in subject imports in crop year 2004/05 did not simply meet demand and make up for the reduced U.S. supply. Table C-3 of the Staff's Confidential Final Report shows that subject imports increased from 154.2 million gallons SSE in crop year 2003/04 to 231.7 million gallons SSE in crop year 2004/05. This was an increase of 77.5 million gallons. As noted previously, inventories of subject imports increased from 26.6 million gallons at year end 2003/04 to 51.3 million gallons at year end 2004/05, an increase of 24.7 million gallons. This evidence shows that 32 percent of the increase in subject imports in crop year 2004/05 went into inventories rather than being used to meet U.S. demand and replace decreased domestic supplies caused by the 2004 hurricanes. This inventory-related increase in available supply supports our finding that subject imports are suppressing prices and negatively impacting the domestic industry. Absent the increasing inventories of Brazilian subject imports in the U.S. market, particularly in the final full year of the period examined, overall ending stocks would have been significantly lower. We find that lower inventories would have created upward pressure on domestic prices of certain orange juice, allowing domestic processors an opportunity to more fully recover cost increases.

In finding that subject imports suppressed prices for the domestic like product, we do not rely on Petitioners' assertion that we should single out certain sales by Brazilian importers made directly into the futures market for FCOJM as evidence of pricing injury.¹⁶⁶ The record indicates that deliveries to the futures market are not infrequent occurrences in this market.¹⁶⁷ We believe that the most salient fact about deliveries to the futures market is that they do not reflect customer demand; these volumes are simply kept in inventory until the trader who owns them finds a customer.¹⁶⁸ As noted above in our volume discussion, the total amount of Brazilian product held in U.S. inventory has been rising over the period examined, irrespective of domestic production trends. Prices of Brazilian product, whether from direct imports or U.S.-held inventory, undersold the domestic like product and have, to a significant degree, prevented price increases that would otherwise have occurred.

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 lower-priced subject

¹⁶⁵ Derived from CR/PR at Table VI-9.

¹⁶⁶ The FCOJ futures market facilitates price discovery in the orange juice market in the United States. Hearing Tr. at 42 (Behr). The futures market is typically used as a hedging and pricing mechanism without actual physical delivery of the product. *Id.* at 44. However, four of eight responding firms indicated that some of their sales of U.S.-produced certain orange juice were delivered directly to the futures market, while two of five firms reported that their sales of imports were delivered directly to the futures market. CR/PR at V-1. When product is delivered directly to the FCOJ futures market, its ownership interest is transferred and physical transfer of the product typically occurs. Petitioners have alleged that delivery into the futures market is often a transfer from one inventory holder to another. While we acknowledge that the FCOJ futures market has an impact on prices for certain orange juice, we note that FCOJ futures prices do not fully determine cash market prices because futures prices take into account future supply and demand conditions in a way that cash prices do not. For example, this is evident from the fluctuating price gap between FCOJ futures prices and FCOJM cash prices over the period examined. *See, e.g.,* Petitioners' Posthearing Br. at Attachment 10.

¹⁶⁷ CR/PR at V-1.

¹⁶⁸ Petitioners' Final Comments at 11-12.

imports prevented increases in domestic prices for certain orange juice, which otherwise would have occurred, to a significant degree.¹⁶⁹

E. Impact of the Subject Imports¹⁷⁰

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 the state of the industry.”¹⁷¹ 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.”¹⁷²

By most measures, the domestic industry’s condition worsened over the period examined despite increasing apparent U.S. consumption.¹⁷³ While the absolute volume of subject imports rose sharply over the period examined, domestic shipments of certain orange juice declined dramatically overall during the period examined.¹⁷⁴ Domestic producers’ market share declined from 87.2 percent in crop year 2001/02 to 79.9 percent in crop year 2002/03, increased to 84.8 percent in crop year 2003/04, and fell to 76.5 percent in crop year 2004/05.¹⁷⁵ Although domestic processors’ capacity increased by 2.7 percent overall during the period examined, domestic processors’ capacity utilization dropped by 28.3 percentage

¹⁶⁹ We have found that subject imports had significant price-suppressing effects over a four-year period examined from crop year 2001/02 until crop year 2004/05. However, even if we used a three-year period for this final phase investigation (*i.e.*, crop year 2002/03 until crop year 2004/05), we would also find that subject imports had significant price-suppressing effects. Underselling by FCOJM subject imports persisted during the three-year period. Moreover, as discussed above, U.S. ending stocks of Brazilian subject imports rose during the three-year period. Inventories of Brazilian subject imports increased from 41.8 million gallons SSE at the end of crop year 2002/03 to 51.3 million gallons SSE at the end of crop year 2004/05. On a relative basis, inventories of Brazilian subject imports increased from 5.9 percent of U.S. ending stocks in crop year 2002/03 to 8.7 percent of U.S. ending stocks in crop year 2004/05. CR/PR at Tables IV-5 & C-3.

¹⁷⁰ The Act 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 final affirmative determination, Commerce found a weighted-average dumping margin of 9.73 percent for Fisher, 19.19 percent for Cutrale, 60.29 percent for Montecitrus, and 15.42 percent for all other Brazilian subject producers. 71 F. R. 2183 (January 13, 2006).

¹⁷¹ 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.

¹⁷² 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 (February 1999).

¹⁷³ As noted previously, the Commission in this final phase investigation collected financial data for three full fiscal years (*i.e.*, 2002, 2003, and 2004) and for one interim year (*i.e.*, January 2005-September 2005). These data corresponded closely to the industry data reported on a crop year (October through September) basis and collected for crop years 2001/02, 2002/03, 2003/04, and 2004/05 in order to assess any cyclicity in this agricultural industry.

¹⁷⁴ The quantity of domestic shipments decreased from 1.3 billion pounds solids in crop year 2001/02 to 1.2 billion pounds solids in crop year 2002/03, increased to 1.3 billion pounds solids in crop year 2003/04, and fell to 1.0 billion pounds solids in crop year 2004/05. The value of these shipments declined from \$1.3 billion in crop year 2001/02 to \$1.2 billion in crop year 2002/03, increased to \$1.3 billion in crop year 2003/04, and dropped to \$1.1 billion in crop year 2004/05. CR/PR at Table III-11.

¹⁷⁵ CR/PR at Table IV-5.

points between crop year 2001/02 and crop year 2004/05.¹⁷⁶ Domestic production fell by 31.3 percent between crop year 2001/02 and crop year 2004/05.¹⁷⁷ U.S. producers' end-of-period inventories of certain orange juice fell by 2.0 percent overall during the period examined declining from 423.7 million pounds solids in crop year 2001/02 to 415.2 million pounds solids in crop year 2004/05, with a decline between crop year 2003/04 and crop year 2004/05.¹⁷⁸ However, as discussed above, the amount of Brazilian subject imports held in U.S. inventory increased during the period examined. Relative to production, U.S. shipments and total shipments, U.S. producers' inventories increased between crop year 2001/02 and crop year 2004/05.¹⁷⁹ Similarly, on a relative basis, reported inventories of subject merchandise grew from 2.3 percent of total available supply in crop year 2001/02 to 3.4 percent of total available supply in crop year 2004/05.¹⁸⁰ This is an increase of 52 percent in the relative amounts of subject imports held in inventories. The number of production workers employed by processors and hours worked declined from crop year 2001/02 to crop year 2004/05.¹⁸¹ Wages paid to workers employed by U.S. processors also declined during the period examined.¹⁸²

The domestic processors' financial indicators worsened substantially over the period examined.¹⁸³ The combined data for toll and non-toll operations for domestic processors show an overall decline in their operating performance for the period examined. By quantity, net sales for domestic processors on their combined toll and non-toll processing operations declined from 985.0 million pounds solids in 2002 to 975.0 million pounds solids in 2003 to 904.5 million pounds solids in 2004, and fell from 788.0 million pounds solids in interim 2004 to 695.5 million pounds solids in interim 2005.¹⁸⁴ By value, net sales for domestic processors on their combined toll and non-toll processing operations declined from \$852.0 million in 2002 to \$781.9 million in 2003 to \$718.7 million in 2004, although they increased slightly from \$576.1 million in interim 2004 to \$603.8 million in interim 2005.¹⁸⁵ For combined toll and non-toll operations for domestic processors, the ratio of operating income to net sales declined from 8.4 percent in 2002 to 6.6 percent in 2003 to a negative 1.2 percent in 2004, and dropped from 7.8 percent in interim

¹⁷⁶ Domestic industry capacity remained relatively flat at 1.7 billion pounds solids throughout the period examined. Domestic industry capacity utilization declined from 85.4 percent in crop year 2001/02 to 74.5 percent in crop year 2002/03, increased to 86.7 percent in crop year 2003/04, and dropped to 57.1 percent in crop year 2004/05. CR/PR at Table III-6.

¹⁷⁷ Domestic industry production declined from 1.41 billion pounds solids in crop year 2001/02 to 1.23 billion pounds solids in crop year 2002/03, increased to 1.47 billion pounds solids in crop year 2003/04, and dropped to 965.4 million pounds solids in crop year 2004/05. CR/PR at Table III-6.

¹⁷⁸ CR/PR at Table III-14. U.S. producers' end-of-period inventories increased from 423.7 million pounds solids in crop year 2001/02 to 439.8 million pounds solids in crop year 2002/03, climbed to 540.4 million pounds solids in crop year 2003/04, and dropped to 415.2 million pounds solids in crop year 2004/05. CR/PR at Table III-14.

¹⁷⁹ The ratio of inventories to production increased from 30.1 percent in crop year 2001/02 to 43.0 percent in crop year 2004/05. The ratio of inventories to U.S. shipments increased from 31.7 percent in crop year 2001/02 to 39.6 percent in crop year 2004/05. The ratio of inventories to total shipments increased from 29.1 percent in crop year 2001/02 to 37.4 percent in crop year 2004/05. CR/PR at Table III-14.

¹⁸⁰ Derived from CR/PR at Table C-3.

¹⁸¹ The number of workers increased from 3,445 in crop years 2001/02 and 2002/03 to 3,542 in crop year 2003/04, and dropped to 3,040 in crop year 2004/05. Worker productivity declined from 147.1 pounds solids per hour in crop year 2001/02 to 139.5 pounds solids per hour in crop year 2002/03, increased to 168.0 pounds solids per hour in crop year 2003/04, and dropped to 123.9 pounds solids per hour in crop year 2004/05. CR/PR at Table III-16.

¹⁸² CR/PR at Table III-16.

¹⁸³ The financial indicators of the domestic processors and growers are expressed on a fiscal year basis, which is typically expressed as one year (e.g., 2004), rather than as two (e.g., 2004/05).

¹⁸⁴ CR/PR at Table VI-9.

¹⁸⁵ Id.

2004 to 2.5 percent in interim 2005.¹⁸⁶ Even when viewed separately rather than combined, domestic processors also experienced deteriorating profitability and operating losses in non-toll and toll operations during the period examined.¹⁸⁷ Cash flow and return on investment for domestic processors both show a similar overall decline during the period examined.¹⁸⁸ Capital expenditures for domestic processors also declined during the period examined.¹⁸⁹

Domestic growers also experienced declining operating profitability during the period examined. Domestic growers' operating income declined irregularly over the period examined from \$12.7 million in 2002 to \$3.9 million in 2004.¹⁹⁰ Domestic growers' ratio of operating income to net sales declined from 6.6 percent in 2002 and 2003 to 2.3 percent in 2004.¹⁹¹ Net sales (by value) for domestic growers declined irregularly over the period examined from \$190.7 million in 2002 to \$170.0 million in 2004.¹⁹² Domestic growers' experienced all of this deteriorating profitability even as they received approximately \$5.7 million in U.S. government financial assistance in 2003 and 2004.¹⁹³

We have considered Respondents' arguments that injury to the domestic industry was attributable to factors other than subject imports. These other factors alleged by Respondents include: the Atkins diet and other low-carbohydrate diets, supply shortages in domestic production of certain orange juice in the aftermath of the 2004 Florida hurricanes, U.S. inventory levels, the necessity of subject imports for blending and duty drawback, and the growing presence of nonsubject imports in the U.S. market. As explained above, the record shows that subject imports contributed importantly to the domestic industry's injury, and, as further discussed below, these alleged "other causes" were not sufficient to sever the causal nexus that we have found between subject imports and the domestic industry's weakened state.

Although apparent consumption did dip somewhat during the period examined, any demand-dampening effects of low-carbohydrate diets (i.e., Atkins diet) were clearly wearing off as apparent consumption rose during the latter part of the period examined.¹⁹⁴ Moreover, while the volume of nonsubject imports rose over the period examined, they grew at a slower rate and represented a smaller

¹⁸⁶ Id.

¹⁸⁷ With respect to domestic processors' non-toll operations, net sales values decreased along with net sales quantities from 2002 to 2004, although net sales values rose slightly between interim 2004 and interim 2005. For domestic processors' non-toll operations, operating income fell from \$*** in 2002 to \$*** in 2003, with *** in 2004. For non-toll operations, domestic processors' operating income as a ratio of net sales fell from *** percent in 2002, to *** percent in 2003, and to *** percent in 2004. CR/PR at Tables VI-1 & VI-4. Although operating ratios for domestic processors' toll operations increased from 2002 to 2003, domestic processors experienced operating losses in their toll operations in 2004 and interim 2005. CR/PR at Table VI-7.

¹⁸⁸ With respect to domestic processors' non-toll operations, cash flow declined from \$*** in 2002 to \$*** in 2003 to \$*** in 2004. Cash flow also declined from \$*** in interim 2004 to \$*** in interim 2005. CR/PR at Table VI-1. For domestic processors, the ratio of operating income to total assets (i.e., return on investment) declined from *** percent in 2002 to *** percent in 2003 and dropped to a negative *** percent in 2004. CR/PR at Table VI-14.

¹⁸⁹ Total capital expenditures for domestic processors declined from \$47.8 million in 2002 to \$13.1 million in 2004, although they increased slightly from \$11.5 million in interim 2004 to \$14.4 million in interim 2005. CR/PR at Table VI-12.

¹⁹⁰ CR/PR at Table VI-15.

¹⁹¹ Id.

¹⁹² Id.

¹⁹³ CR/PR at Table VI-16. In accordance with the grower/processor provision, we have included growers in our domestic industry definition. We note, however, that our conclusions regarding the significant adverse impact of subject imports on the domestic industry would be the same whether growers are included in the domestic industry or not.

¹⁹⁴ CR/PR at Table IV-5.

share of apparent consumption than Brazilian subject imports.¹⁹⁵ As noted above, we do not find that blending or duty drawback demonstrate that subject imports are not having adverse volume or price effects on the domestic industry.

We recognize that some of the declining trends experienced by domestic processors and growers, including trends in production, shipments, capacity utilization, and employment, in part reflect the after-effects of hurricanes and the related spread of citrus diseases, and we do not attribute such effects to the subject imports. Rather, as noted in our volume analysis, we conclude that the record demonstrates a causal nexus between subject imports and material injury to the domestic industry independent of these other factors, based on the extent to which the total volume of Brazilian subject merchandise present in the U.S. market exceeds any supply shortage and the effect of low prices of such volumes on the domestic industry's pricing and financial performance.

At a time of steady or rising demand, the domestic industry has lost market share to the subject imports. While the hurricanes and other factors limiting the domestic industry's ability to meet demand may account for some of the sales of subject imports in the United States, they do not detract from the fact that subject imports have significantly undersold the domestic like product for a product where price is an important factor for purchasers and quality differences do not create a meaningful premium for the domestic like product. For non-toll operations, while both COGS and net sales on a per pound basis decreased each year between 2002/03 and 2004/05, the decline in net sales unit values was greater than the decline in the domestic industry's COGS. Furthermore, while prices for certain orange juice have risen to some extent in interim 2005, the increase in net sales unit values in interim 2005 was only \$*** per pound while COGS increased by \$*** per pound over the same period.¹⁹⁶ Thus, the domestic industry exhibits a classic cost/price squeeze and has been unable to raise its prices sufficiently to cover its production costs even in what Respondents' characterize as a short-supply market. We therefore find that the subject imports have significantly and adversely affected the domestic industry through their increased sales at the expense of the domestic industry and through the extent to which the subject imports suppressed domestic prices to a significant degree, as indicated above.

In sum, we conclude that subject imports had a significant adverse impact on the condition of the domestic industry during the period examined.¹⁹⁷ As discussed above, we find the volume of subject imports to be significant and that the subject imports had significant price-suppressing 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. Therefore, we find that the domestic industry producing certain orange juice is materially injured by reason of subject imports of certain orange juice from Brazil that are sold in the United States at less than fair value.

¹⁹⁵ CR/PR at Table IV-2.

¹⁹⁶ CR/PR at Table VI-1. Combined results for toll and non-toll operations in Table VI-9 show similar results.

¹⁹⁷ We recognize that U.S. processors accounting for *** percent of U.S. certain orange juice production in crop year 2004/05 oppose the petition in this final phase investigation. CR/PR at Table III-5. While the degree of support by members of the domestic industry for the petition may be a factor considered by the Commission, such a factor is not dispositive. Indeed, the Commission has issued an affirmative determination even when a substantial percentage of the industry opposed the petition. See Wooden Bedroom Furniture from China, Inv. No. 731-TA-1058 (Final), USITC Pub. 3743 (December 2004) at 29 ("the level of support by the industry is not dispositive"), n. 234 (citing Allegheny Ludlum Corp. v. United States, 287 F. 3d 1365, 1375-76 (Fed. Cir. 2002)) and n. 233 ("To the extent that respondents' argument appears to suggest that we should revisit whether the petitioners had 'standing' to file the petition . . . it is the responsibility of the Commerce Department, not the Commission, to determine whether there is sufficient industry support for the petition . . . Moreover, once made, Commerce's standing decision may not be revisited . . .").

IV. CRITICAL CIRCUMSTANCES

In its final determination regarding subject merchandise from Brazil, Commerce found that critical circumstances exist for subject imports from Brazil to the U.S. market by Cutrale and Montecitrus, but that critical circumstances did not exist for subject imports from Brazil to the U.S. market by Fischer.¹⁹⁸ Because we have determined that the domestic industry producing certain orange juice is materially injured by reason of subject imports from Brazil, we must further consider “whether the imports subject to the affirmative [Commerce critical circumstances] determination ... are likely to undermine seriously the remedial effect of the antidumping duty order to be issued.”¹⁹⁹ The SAA indicates that the Commission is to evaluate “whether, by massively increasing imports prior to the effective date of relief, the importers have seriously undermined the remedial effect of the order.”²⁰⁰ The Act provides that in making this finding the Commission shall consider, among other factors it considers relevant:

- (I) the timing and the volume of the imports,
- (II) a rapid increase in inventories of the imports, and
- (III) any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined.²⁰¹

Consistent with Commission practice,²⁰² in considering the timing and volume of covered imports, we consider import quantities prior to the filing of the Petition with those subsequent to the filing of the Petition using monthly statistics on the record regarding imports of those firms for which Commerce has made an affirmative critical circumstances determination.

The Petition in this investigation was filed on December 27, 2004. We have reviewed import data for the period June 2004 through July 2005. Comparing the seven-month period preceding the petition’s filing, June 2004 through December 2004, with the seven-month period January 2005 through July 2005,²⁰³ imports for which Commerce made affirmative critical circumstances determinations increased by *** percent from *** pounds solids to *** pounds solids.²⁰⁴ We do not consider the increase in covered import volume in the seven-months following the filing of the petition as likely to undermine seriously the remedial effect of the antidumping duty order, especially given the seasonal nature of the industry.

We also have considered the extent to which there was an increase in inventories of the subject imports. Comparing December 2004 with July 2005, end-of-period inventories increased by *** percent, from *** million pounds solids to *** million pounds solids.²⁰⁵ We do not consider the increase in subject merchandise inventories in the seven months following the filing of the petition as likely to seriously undermine the remedial effect of the antidumping duty order.

¹⁹⁸ 71 F. R. 2183 (January 13, 2006).

¹⁹⁹ 19 U.S.C. § 1673d(b)(4)(A)(i).

²⁰⁰ SAA at 877.

²⁰¹ 19 U.S.C. § 1673d(b)(4)(A)(ii).

²⁰² See, e.g., Certain Frozen Fish Fillets from Vietnam, Inv. No. 731-TA-1012 (Final), USITC Pub. 3617 at 20-22 (August 2003); Certain Ammonium Nitrate from Russia, Inv. No. 731-TA-856 (Final), USITC Pub. 3338 at 12-13 (August 2000).

²⁰³ While the Commission typically uses a 6-month period for comparison purposes in making a determination on critical circumstances, we have used a 7-month period in this final phase investigation because the Petition was filed near the end of the month, on December 27, 2004.

²⁰⁴ CR/PR at Table IV-4.

²⁰⁵ Id.

Nor do we find the existence of any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined.

Based on the record in this investigation, we find that the imports subject to Commerce's affirmative critical circumstances determination are not likely to undermine seriously the remedial effect of the antidumping duty order to be issued, and therefore make a negative finding with respect to critical circumstances.

V. CONCLUSION

For the above-stated reasons, we determine that the domestic industry producing certain orange juice is materially injured by reason of subject imports of certain orange juice from Brazil that are sold in the United States at less than fair value. We make a negative finding with respect to critical circumstances.

**ADDITIONAL VIEWS OF VICE CHAIRMAN DEANNA TANNER OKUN,
COMMISSIONER JENNIFER A. HILLMAN, AND COMMISSIONER DANIEL R. PEARSON
WITH REGARD TO DOMESTIC LIKE PRODUCT**

I. DOMESTIC LIKE PRODUCT

A. In General

In determining 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.”²⁰⁶ 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.”²⁰⁷ 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”²⁰⁸

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.²⁰⁹ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.²¹⁰ The Commission looks for clear dividing lines among possible like products and disregards minor variations.²¹¹ Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.²¹² The Commission must base its domestic like product determination on the record in the investigation before it.

²⁰⁶ 19 U.S.C. § 1677(4)(A).

²⁰⁷ *Id.*

²⁰⁸ 19 U.S.C. § 1677(10).

²⁰⁹ *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).

²¹⁰ *See, e.g., S. Rep. No. 96-249 at 90-91 (1979).*

²¹¹ *Nippon Steel*, 19 CIT at 455; *Torrington*, 747 F. Supp. at 748-49. *See also S. Rep. No. 96-249 at 90-91 (1979)* (Congress has indicated that the 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.”)

²¹² *Hosiden Corp. v. Advanced Display Mfrs.*, 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); *Torrington*, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

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.²¹³

B. Product Description

In its final determination, Commerce defined the imported merchandise within the scope of the investigation as follows:

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).²¹⁴

Commerce expressly excluded from the scope reconstituted and retail orange juice 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.²¹⁵

C. Analysis

1. Whether Conventional FCOJ and NFC Are Separate Domestic Like Products

Based on the record in the preliminary phase of this investigation we found conventional FCOJ and NFC to be separate like products. Because we have revisited our determination based on the additional information available on the record of the final phase of this investigation, we include these views to explain why, based on the expanded record, we find that conventional FCOJ and NFC constitute a single like product.

Physical Characteristics and Uses: In the preliminary phase of this investigation we noted that FCOJ and NFC have certain distinct physical characteristics and end uses.²¹⁶ We noted differences in the level of concentration, shelf life, and breadth of end uses between FCOJ and NFC. In particular we noted that FCOJ is six or seven times more concentrated than NFC.²¹⁷ However, in the final phase of this investigation the vast majority of purchasers that purchased both FCOJ and NFC reported that FCOJ and

²¹³ 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 1998) (particularly addressing like product determination); *Citrosuco Paulista, S.A. v. United States*, 704 F.Supp. 1075, 1087-88 (Ct. Int'l. Trade 1988).

²¹⁴ 71 F.R. 2183 (January 13, 2006).

²¹⁵ *Id.*

²¹⁶ *Certain Orange Juice from Brazil, Inv. No. 731-TA-1089 (Preliminary)*, USITC Publication 3757, March 2005, (Preliminary Determination), at 24.

²¹⁷ CR at I-7; PR at I-6.

NFC are comparable in terms of color, ingredients, viscosity, packaging, and vitamin and mineral content.²¹⁸ A majority of purchasers reported that the brix level and shelf life of FCOJ and NFC are comparable.²¹⁹ NFC and FCOJ use predominantly the same varieties of oranges with only minor distinctions in the overall percentages of varieties used.²²⁰ Both FCOJ and NFC are primarily used to produce single-strength orange juice. While FCOJ is used for other purposes, such as in other beverages and as an ingredient in food products, information collected during the final phase of the investigation indicates that these other uses accounted for only *** percent of total U.S. shipments of domestically produced FCOJ in crop year (CY) 2004/05.²²¹ As such, there is a very strong overlap in the use of both FCOJ and NFC for producing single-strength orange juice.

Interchangeability: In the preliminary phase we noted that there is limited interchangeability between FCOJ and NFC due to different levels of concentration, and different handling and storage equipment.²²² While both can be used to produce single-strength juice NFC is rarely, if ever, concentrated and once concentrated into FCOJ, juice cannot be transformed into NFC. Responses by purchasers with regard to the degree of interchangeability are mixed. Although purchasers report that FCOJ and NFC are generally comparable regarding a number of specific factors, most indicated that FCOJ and NFC are not interchangeable at the wholesale level.²²³ On the whole, the record indicates that purchasers that request one form of the product are unlikely to accept the other form as a substitute.

Channels of Distribution: FCOJ and NFC are predominantly sold to remanufacturers and packagers at the wholesale level. In CY 2004/05, *** percent of U.S. shipments and *** percent of subject imports of FCOJ were sold to remanufacturers and packagers. In CY 2004/05, *** percent of U.S. shipments and *** percent of subject imports of NFC were sold to remanufacturers and packagers. In the preliminary phase we noted that petitioners and respondents disagreed on the degree to which such purchasers overlapped.²²⁴ The record in the final phase of this investigation indicates that there is an overlap in purchasers of FCOJ and NFC.²²⁵ Nine of the responding nineteen purchasers reported purchasing both FCOJ and NFC.²²⁶ Also, there are some differences in the actual storage and transportation of FCOJ and NFC. FCOJ is predominantly stored frozen in tanks and shipped in concentrated form whereas NFC is predominantly stored in aseptic tanks while it is only sometimes stored in a frozen state.²²⁷

²¹⁸ CR/PR at Table II-4.

²¹⁹ *Id.*

²²⁰ Petitioners' prehearing brief at 7 and Citrusuco's prehearing brief at 5.

²²¹ CR/PR at Table I-3.

²²² Preliminary Determination at 24.

²²³ CR/PR at table II-4 and appendix D. Additionally, FCOJ and NFC are governed by different U.S. Food and Drug Administration ("FDA") Standards of Identity. CR at I-13-I-16; PR at I-9-I-12. We note further that some industry participants reported that bulk FCOJ and NFC are interchangeable in producing single-strength, ready-to-serve juice, while others reported differences in, among other things, handling/storage costs and USDA and FDA standards. CR at I-12; PR at I-8-9.

²²⁴ Preliminary Determination at 24-25.

²²⁵ We note that a significant percentage of U.S. NFC shipments never enter the wholesale market and thus have separate channels of distribution. In CY 2004/05, *** percent of U.S. shipments of NFC were consumed internally in the production of retail packaged NFC by U.S. extractor/processors. Between CY 2001/02 and CY 2004/05 the percentage of NFC consumed internally by U.S. extractor/processors ranged between *** percent. CR/PR at table III-11.

²²⁶ CR/PR at Table II-4.

²²⁷ CR at I-7; PR at I-6.

Common Manufacturing Facilities, Employees, and Methods: In the preliminary phase we noted that the production process between FCOJ and NFC differs considerably from juice extraction onward.²²⁸ Based on the record in the final phase of this investigation we find that for the production process as a whole there is significant overlap in the facilities, employees, and processes used in the production of FCOJ and NFC. Round oranges account for a significant majority of the costs of production for both FCOJ and NFC.²²⁹ The oranges used to produce FCOJ and NFC come from the same groves. Moreover, both forms of juice are produced in the same facilities using the same sorting, storage, and extracting equipment. The majority of responding extractor/processors (***) percent) reported using the same equipment and employees to produce both NFC and FCOJ.²³⁰ While certain extractor/processors reported using different extractor settings when processing NFC versus FCOJ, these differences do not appear to be more significant than the variation in extractor settings when processing different varieties of oranges or at different times of the season. FCOJ is produced using an evaporation method while NFC is pasteurized and different storage methods are used. These differences, however, account for only a small percentage of total production costs.²³¹

Producer and Consumer Perceptions: In this final investigation we have more information concerning the perceptions of FCOJ and NFC held by remanufacturers, packagers, and other purchasers. As noted, many purchasers purchase both FCOJ and NFC. Purchasers at the wholesale level reported that FCOJ and NFC are generally comparable and do not differ significantly in terms of factors such as ingredients, color, and viscosity.²³² A majority of purchasers, however, also reported that NFC is perceived as a superior or higher quality product.²³³ As noted most extractor/processors produce both FCOJ and NFC using the same equipment and employees.²³⁴ We have focused our analysis on differences and similarities in producer and consumer perceptions between FCOJ and NFC at the wholesale level only.²³⁵ Although parties frequently presented arguments with regard to consumer perceptions at the retail level, we have not based our decision on those arguments as certain orange juice packaged for retail sale is excluded from the scope of this investigation.

Price: At the wholesale level there is a significant difference in the price of FCOJ versus NFC. Over the period examined, at the wholesale level the price of U.S. commercial shipments of U.S.-produced FCOJ ranged between \$0.86 and \$1.03 per pounds solids, and prices for U.S. shipments of subject imports of FCOJ from Brazil ranged between \$0.80 and \$0.97. Conversely, the price of U.S. commercial shipments of U.S.-produced product and U.S. shipments of subject imports of NFC from

²²⁸ Preliminary Determination at 25.

²²⁹ CR/PR at Table III-10.

²³⁰ CR/PR at Table III-9.

²³¹ Evaporation and storage costs account for 9.2 percent of total FCOJ costs. Pasteurization and storage costs account for 10.1 percent of total NFC costs. CR/PR at Table III-10.

²³² CR/PR at Table II-4.

²³³ CR/PR at appendix D.

²³⁴ CR/PR at Table III-9.

²³⁵ The Commission has stated that it generally looks to customer perceptions of those customers who purchase products from the manufacturers, rather than the perceptions of the ultimate end-users, unless the product is one the customer purchases directly “off the shelf” at the retail level. See Automotive Replacement Glass Windshields from China, Inv. No. 731-TA-922 (Final), USITC Pub. 3494 (March 2002) at 8, n. 37 (contrasting the practice of customers of that product, and of Certain Brake Drums and Rotors from China, Inv. No. 731-TA-744 (Final), USITC Pub. 3035 (April 1997) who did not generally buy the products off the shelf, with those of customers of other products, such as pasta, bicycles, and roses, (Certain Pasta from Italy and Turkey, Invs. Nos. 701-TA-365-366, 731-TA-734-735 (Final), USITC Pub. 2977 (July 1996) at 10-11; Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (July 1996) at 6; Fresh Cut Roses from Columbia and Ecuador, Invs. Nos. 731-TA-684-685 (Final), USITC Pub. 2862 (March 1995) at I-7) where customers did so and where consideration of the ultimate end-user’s opinion was more relevant).

Brazil ranged between \$1.24 and \$1.31, and \$1.43 and \$1.56, respectively.²³⁶ The majority of processors, however, stated that the premium for NFC at the wholesale level is largely driven by higher storage and transportation costs and that the price premium is much smaller at the retail level, due in part to fewer costs associated with repackaging NFC compared with repackaging and reconstituting FCOJ.²³⁷

Conclusion: Based on the additional information available in the final phase of this investigation we find that FCOJ and NFC are part of a single like product. The additional information available at this final phase shows that there are significant similarities in the physical characteristics and end uses, production processes and methods, channels of distribution, and producer perceptions, and that these similarities outweigh the limited degree of interchangeability, some distinctions in consumer perceptions, and significant differences in prices.

²³⁶ CR/PR at Table I-4.

²³⁷ CR at appendix D-20-D-22; PR at appendix D-19 to D-22.

**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 an industry in the United States is neither materially injured nor threatened with material injury by reason of imports of certain orange juice from Brazil that is sold in the United States at less than fair value (“LTFV”).^{238 239}

We join our colleagues’ discussion regarding domestic industry.²⁴⁰ We write separately to discuss the conditions of competition pertinent to our analysis, and to provide our analysis of the statutory factors related to our injury determination.

I. SUMMARY

We determine that the U.S. industry producing certain orange juice is neither materially injured nor threatened with material injury by reason of imports of certain orange juice from Brazil. We find that the volume of certain orange juice imported from Brazil responds to changes in the U.S. harvest of round oranges and that imports from Brazil are primarily pulled into the U.S. market to meet supply shortages and for blending. Throughout the period examined the volume of imports from Brazil has exhibited an inverse relationship to the volume of U.S. production of certain orange juice. When the U.S. harvest of round oranges and U.S. production of certain orange juice declined, imports increased. When the U.S. harvest and U.S. production increased, the volume of imports declined.

We also determine that imports from Brazil have not depressed or suppressed U.S. prices to a significant degree. Imports from Brazil predominantly undersold U.S. FCOJ and predominantly oversold U.S. NFC. Although U.S. prices for FCOJ declined during the middle portion of the period examined, prices increased at the end of the period. Based on price data from the futures market for FCOJ, U.S. prices have continued to increase. We find that the movement of U.S. prices during the period examined is primarily due to changes in the size of the U.S. crop of round oranges and the level of U.S. production of certain orange juice. U.S. prices declined when the U.S. crop and U.S. production increased significantly in the 2003/04 crop year, and prices increased when the U.S. crop and U.S. production declined significantly in the 2004/05 crop year.

Further, we determine that imports from Brazil have not had a negative impact on the U.S. industry. Although the profitability of U.S. extractor/processors declined during the period examined, we do not find that subject imports contributed significantly to these declines. Any declines in production, shipments, and profitability of the U.S. industry are due primarily to changes in the size of the U.S. orange crop. Additionally, U.S. growers were profitable throughout the period examined and grower profits increased in the 2004/05 crop year. Further, we note that a significant majority of U.S. extractor/processors oppose the petition.

Finally, we determine that imports from Brazil do not threaten injury to the U.S. industry. The relevant measure of capacity in this industry is the level of production of oranges, and in the current crop year, orange production in Brazil is expected to decline. Brazil’s main export market by far is the European Union, not the United States, and its exports to that market have not varied with the size of

²³⁸ Commerce made an affirmative final determination of sales at LTFV and calculated final margins of 9.73 percent for Fischer S/A - Agroindustria, 19.19 percent for Sucocitrico Cutrale, S.A., 60.29 percent for Montecitrus Trading, S.A., and 15.42 percent applicable to all other Brazilian producers of certain orange juice. 71 F.R. 2183 (January 13, 2006).

²³⁹ Material retardation is not an issue in this investigation.

²⁴⁰ For our views on whether frozen concentrated orange juice for manufacturing (“FCOJ”) and not-from-concentrate orange juice (“NFC”) constitute a single domestic like product, see our “Additional Views Regarding the Domestic Like Product.” We join the views of the majority concerning whether organic orange juice is part of a single domestic like product with non-organic orange juice.

either the U.S. or Brazilian crops as has been the pattern with exports to other markets. Although imports from Brazil have recently increased, we find that the increase was due to production shortfalls in the United States, and thus does not threaten injury to the U.S. industry.

II. NO MATERIAL INJURY BY REASON OF SALES OF SUBJECT IMPORTS AT LESS THAN FAIR VALUE

In the final phase of antidumping duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.²⁴¹ In making this determination, the Commission must consider the volume of 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.²⁴² The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”²⁴³ 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.²⁴⁴ 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.”²⁴⁵

For the reasons discussed below, we determine that the domestic industry producing certain orange juice is not materially injured by reason of subject imports from Brazil found to be sold at LTFV.

A. Conditions of Competition and the Business Cycle

We have considered the business cycle and taken the following conditions of competition relevant to the U.S. industry producing certain orange juice into consideration in our analysis.²⁴⁶ We note at the outset the unusual scope of this investigation. The scope of this investigation is specific not only to the products covered but also to the foreign producers covered. With regard to FCOJ the scope of the investigation is limited to a subset of the Brazilian industry. Only the Brazilian producers Cargill, Coinbra, Cutrale, Fischer, and Montecitrus are subject to this investigation.²⁴⁷ As a result, there are other Brazilian firms producing and/or exporting orange juice that are not subject to this investigation. The Department of Commerce has not determined, and will not determine, whether these companies have sold or are likely to sell certain orange juice in the United States at less than fair value, and exports by these firms to the United States are considered to be nonsubject for purposes of our investigation.

The domestic industry consists of growers who produce round oranges and extractor/processors that process the round oranges to produce certain orange juice. The latest available USDA data indicate

²⁴¹ 19 U.S.C. § 1673d(b).

²⁴² 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).

²⁴³ 19 U.S.C. § 1677(7)(A).

²⁴⁴ 19 U.S.C. § 1677(7)(C)(iii).

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ 71 F.R. 2183 (January 13, 2006). The scope of this investigation does not cover FCOJ producers that were subject to the pre-existing order on FCOJ from Brazil. As noted by Commerce, “at the time of the filing of the petition, there was an existing antidumping duty order on frozen concentrated orange juice (FCOJ) from Brazil. . . Therefore, the scope of this investigation with regard to FCOJM covers only FCOJM produced and/or exported by those companies which were excluded or revoked from the pre-existing antidumping order on FCOJ from Brazil as of December 27, 2004. Those companies are Cargill Citrus Limitada (Cargill), Coinbra-Frutesp, Cutrale, Fischer, and Montecitrus.” 71 F.R. 2183, 2184 (January 13, 2006).

that in 2002 there were 7,072 farms on which round oranges were grown.²⁴⁸ The Commission obtained data from twelve extractor/processors in Florida which accounted for approximately 91 percent of U.S. production of certain orange juice in crop year (CY) 2004/05.²⁴⁹ Four of the extractor/processors, accounting for *** percent of U.S. production, are or were related to Brazilian processors during the period examined.²⁵⁰ *** of the extractor/processors reported importing and/or purchasing imports of subject certain orange juice during the period examined.²⁵¹ Additionally, we note that a significant majority (*** percent of CY 2004/05 production) of the extractor/processors oppose the petition.²⁵²

A key condition of competition in the U.S. market for certain orange juice is the importance of round oranges. Round oranges are the essential input in the production of certain orange juice and account for approximately 80 percent of the value of certain orange juice.²⁵³ Round oranges are a highly perishable product that are processed into juice within 48 hours after harvest.²⁵⁴ Extractor/processors do not inventory round oranges; rather, all harvested oranges are processed regardless of the immediate demand for juice. The availability of round oranges for processing plays a key role in the conditions of competition faced by extractor/processors, as it is critical that there be sufficient round oranges available to permit the extractor/processors to run their plants efficiently. The production and availability of round oranges for processing is dependent on a number of factors, primarily harvested acreage and yield. During the period examined, weather and disease have played a critical role in the volume of round oranges available for processing. Florida orange groves were significantly damaged by a series of hurricanes during the 2004/05 crop year.²⁵⁵ These hurricanes destroyed fruit, damaged and killed trees, and damaged citrus grove machinery and equipment.²⁵⁶

The impact of weather and other factors on the U.S. crop resulted in significant volatility in U.S. round orange production during the period examined. The Florida crop of oranges for processing declined by 12.4 percent from CY 2001/02 to CY 2002/03. The crop then increased by 20.1 percent in CY 2003/04 to a near record level.²⁵⁷ As a result of the four hurricanes in 2004 the U.S. crop declined by 38.7 percent in CY 2004/05. The volatility in orange production resulted in significant volatility in U.S. production of certain orange juice. U.S. production of certain orange juice declined from 1.4 billion pounds solids in CY 2001/02 to 1.2 billion pounds solids (or 12.8 percent) in CY 2002/03. The significant increase in the U.S. orange crop in CY 2003/04 resulted in an increase in U.S. production of certain orange juice to 1.5 billion pounds solids, or by 19.5 percent, in CY 2003/04. The drastic decline in the orange crop in CY 2004/05 resulted in a significant decline in U.S. production of certain orange juice to only 965 million pounds solids, or by 34.1 percent.²⁵⁸ The significant volatility in the U.S. orange crop requires extractor/processors to import or purchase subject imports to offset shortfalls in U.S.

²⁴⁸ CR/PR at III-1. The Commission sent growers' questionnaires to a random sample of approximately 400 firms identified by the petitioners as domestic growers of juice oranges. Forty firms provided responses to the Commission's growers' questionnaire, but the responses contained limited usable data. Therefore, where necessary, we have also used data available from the USDA.

²⁴⁹ The U.S. crop year runs from October to September. CR/PR at Table III-2.

²⁵⁰ Cargill, Citrusuco N.A., Cutrale USA, and Louis Dreyfus.

²⁵¹ CR/PR at Table III-13.

²⁵² CR/PR at Table III-5.

²⁵³ CR/PR at Table III-10.

²⁵⁴ Cutrale and Louis Dreyfus prehearing brief at 7.

²⁵⁵ CR at III-5; PR at III-4.

²⁵⁶ Id.

²⁵⁷ CR/PR at Table III-2.

²⁵⁸ CR/PR at Table III-6.

production.²⁵⁹ Additionally, most extractor/processors blend their own orange juice with subject imports. This blending is done to meet customer specifications.²⁶⁰ As a result, some volume of subject imports is necessary to meet production shortfalls and to meet customer requirements.²⁶¹ Extractor/processors that accounted for *** percent of U.S. production in CY 2004/05 *** imported and/or purchased subject imports during the period examined.²⁶²

Imports from Brazil are the leading source of U.S. imports of certain orange juice.²⁶³ The Brazilian industry is largely focused on export markets, particularly the European Union and Asian markets.²⁶⁴ Imports of FCOJ from Brazil, however, have been a part of the U.S. market for many years. Until recently, NFC was not imported into the United States. The development, however, of new prototype tanker ships capable of transporting NFC has allowed NFC to be transported from Brazil in a cost-effective manner.²⁶⁵

U.S. apparent consumption for certain orange juice fluctuated during the period examined. Apparent consumption declined in CY 2002/03 and then increased modestly in CY 2003/04 and CY 2004/05.²⁶⁶ The decline in apparent consumption has been concentrated in the market for FCOJ while consumption of NFC has generally increased.²⁶⁷ Industry representatives generally attributed the overall decline in demand to the impact of low-carbohydrate diets that discouraged orange juice consumption as well as continued high retail prices for orange juice. Industry representatives believe, however, that with the declining popularity of low-carbohydrate diets, demand will improve.²⁶⁸ Even at reduced levels of apparent consumption, U.S. demand exceeded U.S. production of certain orange juice in every year of the period examined. U.S. production was considerably less than apparent consumption in CY 2002/03 and CY 2004/05, and imports, largely from Brazil, filled the gap between domestic supply and demand.

The New York Board of Trade ("NYBOT") futures market for FCOJ plays a significant role in the U.S. market for certain orange juice. Petitioners note that while the contracts traded on the futures market are only for FCOJ, the market affects prices for both FCOJ and NFC. The futures market also affects the price of round oranges because it serves as an efficient price discovery mechanism.²⁶⁹ Petitioners also note that prices in the U.S. market are generally tied to the futures market and that the price of fruit delivered into the cash market is usually based on the near term futures price.²⁷⁰

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."

²⁵⁹ Hearing Tr. at 87 (Behr) and 237 (Freeman).

²⁶⁰ CR at III-13; PR at III-10.

²⁶¹ Hearing Tr. at 154 (McGrath) and 185 (McKenna).

²⁶² CR/PR at Table III-13.

²⁶³ CR/PR at Table IV-2.

²⁶⁴ Brazilian exports to the EU and Asia accounted for between *** percent of total shipments. CR/PR at Table VII-4.

²⁶⁵ CR/PR at IV-1.

²⁶⁶ CR/PR at Table IV-5.

²⁶⁷ Id.

²⁶⁸ Petitioners' Prehearing Br. at 43; Hearing Tr. at 164-165 (Behr and Chapman).

²⁶⁹ Hearing Tr. at 11 (McGrath); 21 (McKenna); 73 (Behr).

²⁷⁰ Hearing Tr. at 11 (McGrath) and 21-22 (McKenna).

The quantity of subject imports increased from 109.7 million gallons SSE in CY 2001/02 to 227.3 million gallons SSE in CY 2002/03, representing an increase of 107.1 percent.²⁷¹ Subject imports declined to 154.2 million gallons SSE in CY 2003/04, a decrease of 32.2 percent, before increasing to 231.7 million gallons in CY 2004/05, or by 50.3 percent.

Subject imports' market share followed a similar trend, increasing from 7.6 percent in CY 2001/02 to 15.9 percent in the following crop year.²⁷² Market share declined to 10.7 percent in CY 2003/04, before increasing to 15.4 percent in CY 2004/05. Comparatively, the domestic industry's market share declined from 87.2 percent in CY 2001/02 to 79.9 percent in CY 2002/03, increased to 84.8 percent in CY 2003/04, and then declined to 76.5 percent in CY 2004/05. Nonsubject imports accounted for a small but increasing share of the U.S. market, increasing from 5.2 percent in CY 2001/02 to 8.0 percent in CY 2004/05.

As discussed in the section above on conditions of competition, U.S. production of certain orange juice depends on the availability of round oranges. During the period examined, the volatility in U.S. round orange production directly affected U.S. production of certain orange juice. U.S. demand for certain orange juice exceeded U.S. production in every year of the period examined. Thus, imports are necessary to supplement U.S. production, in that they fill the gap between U.S. production and U.S. consumption. Indeed, an examination of import trends during the period examined demonstrates the existence of an inverse relationship between domestic production and subject imports.²⁷³ While domestic production declined to 1.2 billion pounds solids in CY 2002/03 from 1.4 billion pounds solids in CY 2001/02, the quantity of subject imports increased to 233.9 million pounds solids in CY 2002/03 from 112.9 million pounds solids in CY 2001/02. Conversely, when domestic production increased to 1.5 billion pounds solids in CY 2003/04, subject imports declined to 158.7 million pounds solids; and in CY 2004/05, as domestic production plummeted to 965.4 million pounds solids, subject import increased to 238.4 million pounds solids.²⁷⁴ These trends demonstrate that subject imports are pulled into the U.S. market during years when there are shortfalls in domestic production, a phenomenon that petitioners do not dispute. Indeed, petitioners acknowledge that Brazilian juice is used at times when domestic supply is short, and imports are needed to meet "marketing requirements."²⁷⁵ Accordingly, we find that subject import volumes respond to year-to-year fluctuations in U.S. orange and orange juice production.

In addition to supplementing production shortfalls, subject imports are used for blending. Most domestic producers blend their juice with purchases of U.S. orange juice and/or imports of orange juice in order to meet customer specifications.²⁷⁶ Respondents note that most of the FCOJ sold in the U.S. market is a blend of U.S. and Brazilian juice, and that approximately *** percent of Brazilian imports, on average, was blended with U.S. juice over the course of the period examined.²⁷⁷ Respondents claim that blending is required to improve the quality of U.S. juice and to meet country-of-origin labeling requirements.²⁷⁸ In contrast, petitioners argue that Brazilian imports are not needed to meet U.S. quality standards because the U.S. processors/extractors could use U.S.-produced Valencia oranges, of which

²⁷¹ CR/PR at Table IV-2. With regard to CY 2001/02, we note that subject imports in that year were not only the lowest of any year during the period examined, but also were lower than in any year going back at least to CY 1989/90. Indeed, the level of subject imports in CY 2001/02 was the culmination of a steady decline in subject imports beginning in CY 1998/99. CR/PR at Table IV-6.

²⁷² CR/PR at Table IV-5.

²⁷³ CR/PR at Table C-3.

²⁷⁴ *Id.*

²⁷⁵ Petitioners' Posthearing Br. at 5; Hearing Tr. at 86 (Chapman); 87-88 (Behr); 422 (McGrath).

²⁷⁶ CR at III-13; PR at III-10.

²⁷⁷ Cutrale and Louis Dreyfus Prehearing Br. at 12-13.

²⁷⁸ *Id.* at 13.

there is an abundant supply.²⁷⁹ They also argue that viscosity is controlled through the extraction and finishing process, not by the amount of Brazilian juice blended with U.S. juice.²⁸⁰ Despite petitioners' arguments, we find that, during the period examined, a significant volume of Brazilian imports was blended with U.S. juice.²⁸¹ We find that the use of subject imports for blending is based on a variety of factors, including to meet customer specifications, and that such imports enter the U.S. market for reasons not related to price.²⁸²

With respect to U.S. exports, U.S. processors can make their exports more competitive in export markets by using duty drawbacks to offset the higher price of their juice. In CY 2001/02, the quantity of U.S. export shipments totaled 118.1 million pounds solids, representing 8 percent of U.S. shipments. This amount declined to 50.8 million pounds solids in CY 2002/03, rose to 74.3 million pounds solids in CY 2003/04, and then declined to 61.5 million pounds solids in CY 2004/05.²⁸³ The NTR tariffs ranging from 4.5 to 7.85 cents per liter on U.S. juice imports from Brazil can be recouped on U.S. juice exports through the duty drawback program. This effectively enables U.S. processors to reduce their export prices to compete on the world market. During CY 2004/05, U.S. processors claimed duty drawback valued at \$*** million.²⁸⁴ Because orange juice imports from Mexico, Belize, and Costa Rica, which account for most U.S. imports of nonsubject orange juice, enter the United States duty free, only imports of Brazilian juice can produce tariff revenues that can be used to fund the duty drawback program.²⁸⁵ We note that at least one petitioning firm acknowledges that while it does not "import to export," the duty drawback program improves the profitability of its export business.²⁸⁶

With respect to inventories, petitioners argue that the build-up of inventories of subject imports at the end of the period examined indicates that such imports were not needed to supplement domestic production.²⁸⁷ Respondents argue that inventories provide an important safety net in an industry that suffers dramatic ups and downs in production from year to year.²⁸⁸ The volatility in supply means that producers must maintain inventories to meet any shortfalls in production. Also, with approximately 6 months between crops, juice processors must draw from inventories to meet demand. Even after oranges are harvested, juice producers must maintain adequate inventory levels. Respondents note that in addition to supplementing production shortfalls, inventories ensure that different orange varieties can be blended to maintain the year-round marketability of the juice.²⁸⁹ While there is some disagreement over the level of inventories needed, petitioners do not deny that inventories are an important factor in the orange juice industry. We note that in CY 2003/04, U.S. processors had 40 weeks worth of juice inventories on hand.²⁹⁰ After the hurricanes reduced U.S. orange production in 2004 and 2005,

²⁷⁹ Petitioners' Posthearing Br. at 20.

²⁸⁰ Id. at 21.

²⁸¹ The proportion of Brazilian juice used for blending during the period examined was *** percent in CY 2001/02, *** percent in CY 2002/03, *** percent in CY 2003/04, and *** percent in CY 2004/05. CR/PR at Tables III-7 and Table C-3.

²⁸² In this regard, we note that U.S. Valencia oranges are only available late in the growing season. Hearing Tr. at 102 (Chapman).

²⁸³ CR/PR at Table C-3.

²⁸⁴ See, generally, questionnaire responses of processors.

²⁸⁵ CR at III-27; PR at III-18.

²⁸⁶ Hearing Tr. at 137 (Behr).

²⁸⁷ Petitioners' Posthearing Br. at 5.

²⁸⁸ Cutrale and Louis Dreyfus Prehearing Br. at 41.

²⁸⁹ Id.

²⁹⁰ CR at III-27, PR at III-18.

inventories fell to a 25-week supply,²⁹¹ declining from 540.4 million pounds in CY 2003/04 to 415.2 million pounds in CY 2004/05. This decline indicates that domestic processors were significantly drawing down inventories at a time when domestic production was short. We conclude that the dramatic increase in subject imports in the most recent crop year, some of which were inventoried, enabled U.S. processors both to meet U.S. demand and maintain acceptable inventory levels.

In examining whether the volume of subject imports, or the increase in that volume, is significant in absolute terms or relative to domestic production or consumption, we find that the volume of subject imports and the increase in that volume are significant on an absolute basis, but we also find that such volume is necessary to complement and supplement U.S. production. As discussed, the volatility in U.S. production of round oranges and certain orange juice during the period examined resulted in a need for subject imports. The data clearly show that the level of subject imports is inversely related to the level of U.S. production. During years when domestic production declined, subject imports increased; conversely, when domestic production increased, the level of subject imports declined. Accordingly, as explained further below, we find that, during the period examined, subject imports served to supplement and complement domestic production and therefore are not significant relative to production and consumption and did not have a significant adverse impact on domestic prices or on the condition of the domestic industry.

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.²⁹²

Most extractor/processors and importers indicated that a majority of their sales of certain orange juice are made on either a short-term contract or spot basis and sales of NFC are almost always made on either a long-term or short-term contract basis.²⁹³ U.S. purchasers ranked quality as the number one factor considered in their purchasing decisions. Price was named by only one of 26 responding purchasers as the number one factor generally considered in deciding from whom to purchase certain orange juice.²⁹⁴ Price was named by nine purchasers as the number two factor and the number three factor by 10 responding purchasers. As noted above, the U.S. price for certain orange juice is significantly influenced by the price of FCOJ on the NYBOT futures market.

During the period examined, U.S. prices, based on data collected from Commission questionnaires, generally fluctuated but moved in tandem with the futures price.²⁹⁵ U.S. FCOJ prices increased irregularly from the beginning of the period examined until approximately December 2003. Subsequently, U.S. FCOJ prices declined irregularly, reaching a low of \$0.75 per pound in May 2004. U.S. FCOJ prices began increasing thereafter and increased considerably from their low point in May

²⁹¹ Id.

²⁹² 19 U.S.C. § 1677(7)(C)(ii).

²⁹³ CR/PR at V-3.

²⁹⁴ CR at II-9; PR at II-5.

²⁹⁵ CR/PR at Figure V-5.

2004 to approximately \$1.01 per pound in August and \$0.98 per pound in September 2005.²⁹⁶ These trends in U.S. prices are corroborated by movements in the futures prices, which also increased early in the period examined before declining and reaching a low point of \$0.56 per pound in May 2004. The FCOJ futures price increased sharply thereafter. In fact, the FCOJ futures price reached its highest level during the period examined at \$1.25 per pound in December 2005 and remained at a high level in January 2006.²⁹⁷

U.S. prices for NFC were generally stable from the beginning of the period examined through the end of 2003. U.S. NFC prices declined only slightly in February, March, and April of 2004 before increasing thereafter.²⁹⁸ U.S. NFC prices were over *** from June through September 2005, the latest month for which the Commission has NFC price data.

Subject imports of FCOJ generally undersold U.S. FCOJ during the period examined. The magnitude of the underselling, however, was generally modest. Subject imports undersold U.S. FCOJ in 41 of 48 possible comparisons but the average underselling margin was only 8.3 percent.²⁹⁹ By contrast, subject imports of NFC predominantly oversold U.S. NFC. Subject imports oversold U.S. NFC in 34 of 39 potential comparisons and the average overselling margin was 16.5 percent. Moreover, neither the frequency nor the magnitude of the underselling by subject imports varied significantly during the period examined. In particular, the frequency and magnitude of underselling by subject imports during 2004 when U.S. FCOJ prices declined was not more significant than the frequency and magnitude of the underselling in 2005 when U.S. FCOJ prices increased.³⁰⁰ This indicates that subject import prices likely did not affect U.S. prices differently during different parts of the period examined. For certain orange juice as a whole, the record indicates a mixed pattern of underselling by subject imports with the underselling concentrated in the FCOJ market. Because the FCOJ market is somewhat larger than the NFC market, however, we find the underselling by subject imports to be significant.

Petitioners have argued that subject imports depressed and suppressed U.S. prices.³⁰¹ With respect to price depression, we note that although U.S. FCOJ prices declined in the first half of 2004, prices increased thereafter. U.S. NFC prices never declined significantly during the period examined, and have increased overall. Further, because U.S. prices are generally affected by the FCOJ futures price, the continuing increase in the futures price indicates that U.S. prices have continued to increase since September 2005. Additionally, the volume of subject imports declined during the period when U.S. prices for certain orange juice declined. Therefore, we do not find that subject imports depressed U.S. prices to a significant degree.

Petitioners also argue that subject imports suppressed U.S. prices, particularly in the period subsequent to the impact of three hurricanes in August and September 2004.³⁰² As evidence of this suppression, petitioners assert that FCOJ futures prices did not increase as significantly after the 2004 hurricanes as they did after prior natural disasters, such as the severe freeze in CY 1989/90.³⁰³ Petitioners specifically focus on the timing of the importation of subject imports on a monthly basis and on the deliveries of FCOJ by Cutrale to the futures market as the factors causing the alleged price suppression.³⁰⁴

²⁹⁶ CR/PR at Table V-1.

²⁹⁷ NYBOT.

²⁹⁸ CR/PR at Table V-2.

²⁹⁹ CR at V-15; PR at V-8.

³⁰⁰ CR/PR at Table V-1.

³⁰¹ Petitioners' Prehearing Br. at 51.

³⁰² Petitioners' Prehearing Br. at 52; Hearing Tr. at 55 (Warlick).

³⁰³ Petitioners' Prehearing Br. at 52.

³⁰⁴ Petitioners' Posthearing Br. at 7-10.

In support of their first argument, that high volumes of subject imports suppressed U.S. prices in CY 2002/03 and CY 2004/05, petitioners plotted monthly subject import volumes against monthly FCOJ futures prices and monthly bulk FCOJ Florida prices.³⁰⁵ We do not find any relationship between monthly subject import volumes and the price movements of either the FCOJ futures price or the bulk FCOJ Florida price. We note that monthly subject import volumes fluctuated significantly in a manner that does not correlate with fluctuations in prices. For example, the monthly volume of subject imports was highest in January 2003; however, the bulk FCOJ Florida price did not change in either January or February 2003.³⁰⁶ Although the FCOJ futures price declined in January 2003, it also declined in December 2002 when monthly subject import volume was at a historically low level, and it declined in February 2003 when monthly subject import volume was significantly less than in January 2003. We also note that monthly subject import volume increased from December 2004 to April 2005. During that same period both the FCOJ futures price and the bulk FCOJ Florida price increased steadily.³⁰⁷ The record does not show any consistent relationship between monthly subject import volumes and changes in either the FCOJ futures price or the bulk FCOJ Florida price. Therefore, the record does not establish that the timing of the importation of subject imports during CY 2002/03 and CY 2003/04 suppressed U.S. certain orange juice prices.

Petitioners further allege that deliveries of FCOJ to the futures market by Cutrale were made in an effort to eliminate inventories in Brazil and that Cutrale could have received a better return in other markets.³⁰⁸ Petitioners assert that the impact of these deliveries to the futures market suppressed U.S. orange juice prices. Specifically, petitioners allege that deliveries by Cutrale to the futures market after the hurricanes in 2004 suppressed price increases that otherwise would have occurred. We note that both U.S.- and Brazilian-owned firms have delivered FCOJ to the futures market during the period examined and that such deliveries are a typical and common industry practice.³⁰⁹ For example, *** and *** reported that *** and *** percent of their sales of U.S.-produced certain orange juice, respectively, were delivered to the futures market.³¹⁰ Each of these companies delivered a higher percentage of their sales to the futures market than Cutrale, which reported that *** percent of its sales of imports of certain orange juice were delivered to the futures market.³¹¹

Petitioners assert that deliveries of a large percentage of monthly imports to the futures market by Cutrale in March 2003, March 2004, and September 2004 suppressed U.S. prices.³¹² While Cutrale's deliveries to the futures market in these months may have represented a large percentage of total imports in those months, the actual volume of subject imports during those months was small, and therefore Cutrale's deliveries would not have significantly affected prices. Furthermore, neither the volume of subject imports in March 2003 and March 2004 nor the volume of FCOJ delivered into the futures market

³⁰⁵ Petitioners' Posthearing Br. at Attachment 5.

³⁰⁶ Id.

³⁰⁷ Id.

³⁰⁸ Petitioners' Posthearing Br. at 8-9.

³⁰⁹ Respondents Cutrale and Louis Dreyfus have explained that they consider the futures market to be a good customer. They note that delivery on the futures market requires the new owner to pay for the product. The new owner also is required to pay storage charges to the previous owner until such time as the FCOJ is removed from the previous owner's storage tank. Respondents note that such storage payments are not received when selling to a conventional customer. Hearing Tr. at 284-285 (Burkhardt) and 286-287 (Freeman).

³¹⁰ CR/PR at V-1.

³¹¹ Id.

³¹² Petitioners' Posthearing Br. at 9.

by Cutrale in those months were unusual.³¹³ In March 2003 and March 2004, Cutrale's deliveries to the futures market accounted for less than 4 percent of the exchange's month-end open interest.³¹⁴ Total subject imports of FCOJ in March 2003 and March 2004 accounted for only 7.6 and 10.6 percent of total subject imports in those years, respectively. Therefore, subject imports were not more concentrated in those months than in others. Cutrale's deliveries to the futures market in those months accounted for only 4.1 and 6.7 percent of total subject imports in those months, respectively.

Petitioners provide specific data on Cutrale's deliveries to the futures market around the time of the 2004 hurricanes.³¹⁵ Petitioners' data show that Cutrale delivered 510 contracts totaling approximately 7.7 million pounds at prices between \$0.7850 and \$0.8300 per pounds solids in September 2004.³¹⁶ These deliveries represented only 1.6 percent of the month-end open interest in the FCOJ futures market in September. Further, the average near-by futures settlement price in September was \$0.7999 per pounds solids; therefore the average price at which Cutrale delivered into the futures market, \$0.8075 per pounds solids, was higher than the average settlement price. The average near-by futures settlement price increased to \$0.8249 per pounds solids in October 2004 after Cutrale's deliveries to the futures market.

Cutrale also delivered into the futures market in November 2004, when it delivered 120 contracts totaling 1.8 million pounds at prices between \$0.7440 and \$0.7725 per pounds solids. These deliveries represented only 3 percent of the month-end open interest in the futures market in that month. The average near-by futures settlement price in November 2004 was \$0.7499 per pounds solids. Therefore, the average price of \$0.7583 per pounds solids at which Cutrale delivered to the futures market was well above the average settlement price. Further, in December 2004, after these deliveries by Cutrale, the futures price increased to \$0.8346 per pounds solids. Therefore, we do not find that these relatively small volumes of deliveries to the futures market at prices above the average settlement price suppressed increases in FCOJ futures prices that otherwise would have occurred. Accordingly, through our examination of futures price data, we find that subject imports did not suppress price increases that otherwise would have occurred.³¹⁷

We find that the movement of U.S. prices during the period examined is more closely linked to changes in U.S. production and inventory levels. U.S. FCOJ prices declined in the 2003/04 crop year. In that crop year, the U.S. crop of oranges for processing totaled 232.1 million boxes.³¹⁸ This was the largest

³¹³ CR/PR at Table IV-3; Petitioners' Posthearing Br. at Attachment 9.

³¹⁴ Petitioners' Posthearing Br. at Attachment 9.

³¹⁵ *Id.*

³¹⁶ We note that Cutrale reports that only *** percent of its deliveries to the futures market since January 2003 were physically delivered into the futures market. The remainder of these deliveries was "reissues" to other purchasers and not actually sold into the market for physical delivery. More specifically, Cutrale reports that of the 451 contracts cited by petitioners in November 2004 only *** or *** percent represented physical deliveries of juice to the market. If Cutrale's deliveries to the futures market were actually less than that alleged by petitioners, this further supports our finding that such deliveries did not depress or suppress U.S. prices. Cutrale and Louis Dreyfus Posthearing Br. at Attachment 1, pp. 23-24.

³¹⁷ We note that the prices received by Florida growers correlate closely and inversely with the size of the Florida orange crop. The per-box price of early/mid-season Florida oranges for processing declined from \$4.62 during CY 2002/03 to \$4.14 in CY 2003/04. Valencia orange prices declined from \$6.00 to \$5.82. These price declines occurred as the Florida crop of oranges for processing increased by 20.1 percent. In CY 2004/05 when the Florida orange crop declined by 34.9 percent, per-box prices increased to \$4.46 for early/mid-season oranges and to \$6.53 for Valencia oranges. CR/PR at Table III-2; USDA Citrus Fruit Summary, September 2005; Cutrale and Louis Dreyfus Posthearing Br. at Attachment 4.

³¹⁸ CR/PR at Table III-2.

crop during the period examined and was one of the largest crops on record.³¹⁹ This large crop was the result of significant improvements in yield even as bearing acreage declined.³²⁰ Similarly, U.S. production of certain orange juice was approximately 1.5 billion pounds solids in 2003/04 which was the highest level during the period examined.³²¹ These particularly high levels of domestic production occurred even as U.S. demand declined as a result of the impact of low-carbohydrate diets.³²² This significant increase in domestic production coupled with declining demand resulted in an oversupply of certain orange juice.

This oversupply was the primary cause of the increase in FCOJ inventories. According to USDA data, ending stocks of certain orange juice increased only slightly from CY 2001/02 to CY 2002/03.³²³ After the very large U.S. crop in CY 2003/04, however, U.S. ending stocks increased significantly from approximately 705 million gallons SSE to approximately 842 million gallons SSE. We also find that subject imports did not play a significant role in the increase in total inventories of certain orange juice during the period examined. The ratio of U.S. importers' end-of-period inventories of subject imports to total ending stocks declined from 5.9 percent in the CY 2002/03 to only 3.2 percent in CY 2003/04.³²⁴ Additionally, subject import volume declined from 227 million gallons SSE in CY 2002/03 to 154 million gallons SSE in CY 2003/04. Therefore, the decline in U.S. FCOJ prices occurred as U.S. production reached record levels and subject import volume declined.

The financial data reported by extractor/processors indicates that the processors faced a cost-price squeeze in that they experienced declining profitability over the period examined as sales revenue declined more quickly than did costs. The ratio of extractor/processors' costs of goods sold to net sales revenue (COGS/sales ratio) increased in each year of the period and when the interim periods are compared. The increase in this ratio from fiscal year ("FY") 2002/03 to FY 2004/05 occurred as the unit value of net sales of certain orange juice declined more quickly than unit COGS. Net sales unit value of certain orange juice declined from \$*** to \$*** per pounds solids while unit COGS declined from \$*** to \$*** per pounds solids.³²⁵ The increase in the COGS/sales ratio resulted in a decline in profitability from FY 2002/03 to FY 2003/04 and in slight losses in FY 2004/05.³²⁶ The COGS/sales ratio increased from *** percent in interim 2004 to *** percent in 2005 as net sales unit values did not increase as quickly as did unit costs. The domestic industry, however, remained profitable in interim 2005.

Although the decline in the unit value of net sales of certain orange juice in FY 2003/04 is consistent with declining FCOJ prices, it is not consistent with the relatively steady NFC prices during that period. Sales of NFC accounted for approximately 27 percent of the total value of the domestic industry's net sales in that year. Further, the continued decline in the unit value of net sales in FY 2004/05 stands in contrast to the increase in U.S. FCOJ and NFC prices during that year.

³¹⁹ Cutrale and Louis Dreyfus Posthearing Br. at 8.

³²⁰ CR/PR at Table III-2.

³²¹ CR/PR at Table C-3.

³²² Hearing Tr. at 165 (Chapman).

³²³ CR/PR at Table III-15.

³²⁴ CR/PR at Tables IV-5 and VII-8.

³²⁵ CR/PR at Table VI-1 (non-toll operations).

³²⁶ We note that the financial results of the industry's combined non-toll and toll operations are somewhat different than their non-toll financial results alone. The domestic industry realized somewhat larger losses in 2004/05 based on combined non-toll and toll operations as a result of ***. While the absolute levels of profitability are somewhat different the overall trend between non-toll and combined non-toll and toll operations is the same and our analysis is equally sound regardless of which data set is used.

Accordingly, as we do not find that subject imports depressed or suppressed U.S. prices to a significant degree, and as explained further below, we do not find that subject imports are a significant cause of any cost-price squeeze experienced by the domestic industry.

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.³²⁷ 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.”^{328 329}

As noted above, we concur with the majority in determining that growers of oranges are part of the domestic industry producing certain orange juice. Consequently, we have examined performance indicators in trade and financial data for both segments of the industry: (1) growers of oranges and (2) processors of orange juice.

With regard to growers, the Commission received questionnaire data on financial performance from *** U.S. orange growers, representing 12 percent of U.S. oranges dedicated to the production of certain orange juice during CY 2004/05.³³⁰ These data show that growers were consistently profitable over the three fiscal years for which data were collected. In particular, the ratio of operating income to sales was 6.6 percent in both FY 2002/03 and 2003/04, before declining to 2.3 percent of sales in FY 2004/05.³³¹ In addition, the growers’ ratio of net income to sales was also consistently positive; however, in contrast to the operating income ratio, the net income-to-sales ratio first increased in FY 2003/04 to 8.2 percent of sales, then declined in FY 2004/05 to a level that was still higher than at the start of the period.³³²

Further, the record contains publicly available information concerning the condition of Florida growers. These data, compiled by USDA, show that the average price per 90-pound box received by U.S. orange growers declined from \$5.37 per box in CY 2002/03 to \$4.99 per box in CY 2003/04, before

³²⁷ 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.”)

³²⁸ 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 (February 1999) at 25, n.148.

³²⁹ 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). As noted above, Commerce calculated final margins of 9.73 percent for Fischer S/A - Agroindustria, 19.19 percent for Sucocitricio Cutrale, S.A., 60.29 percent for Montecitrus Trading, S.A., and 15.42 percent applicable to all other Brazilian producers of certain orange juice. 71 F.R. 2183, (January 13, 2006).

³³⁰ CR/PR at III-1; CR at VI-26, PR at VI-11. Data on trade and employment were particularly limited and the Commission staff did not tabulate those data. In addition, the Commission does not have interim-period financial data for growers.

³³¹ CR/PR at Table VI-15.

³³² We note that much of the increase in growers’ other income in CY 2004/05 was due to an increase in government assistance and proceeds from insurance. CR/PR at table VI-15. This does not detract, however, from our analysis. The increase in government insurance payments in CY 2004/05 is likely due to the impact of the 2004 hurricanes and is not a reaction to subject imports. Moreover, we do not consider these payments to be part of a government income or price support program as described in section 771(7)(D)(ii) of the Act (U.S.C. 19 § 1677(7)(D)(ii)).

increasing to \$5.63 per box in CY 2004/05.³³³ These data also indicate that, in contrast to the trends in prices, total revenue received by U.S. growers increased from \$1.09 billion in CY 2002/03 to \$1.21 billion in CY 2003/04, before falling to \$843 million in CY 2004/05.

With regard to the processing segment of the industry, the Commission received questionnaire data on trade and financial indicators from 12 U.S. extractor/processors, representing more than 90 percent of U.S. production of certain orange juice during CY 2004/05.³³⁴ Trade and employment data, reported on a crop-year basis, show fairly steady processing capacity over the four crop years, while production and the quantity of U.S. shipments rose and fell in close correlation to the size of the U.S. orange crop.³³⁵ The unit value of commercial shipments fluctuated inversely with production levels. The number of production workers and hours worked by those workers declined overall over the four crop years, but virtually all of the decline occurred in CY 2004/05, when the orange crop was extremely short.

Financial data were generally reported on a fiscal-year basis, and fiscal-year reporting periods varied among the responding processors.³³⁶ These data indicate that the processing segment of the industry was profitable in all periods examined except for FY 2004/05.³³⁷ Nonetheless, over the three fiscal years reported, the domestic industry's financial performance declined. In particular, the value of net sales and the unit value of those sales declined steadily. Operating income fell from *** percent of sales in FY 2002/03 to *** percent of sales in FY 2003/04, then to *** percent of sales in FY 2004/05. When the interim periods are compared, the quantity of net sales fell, while the value of net sales rose, resulting in a significant increase (*** percent) in the unit value of net sales. Operating income was positive in both interim periods, but fell in interim 2005 compared to its interim 2004 level.

Although on an aggregate basis the processors' financial performance declined, individual companies' financial results varied widely over the period examined. This investigation is somewhat unusual in that a majority of the processing segment of the industry opposes the petition. Specifically, of the 11 processors with production in CY 2004/05, six firms, accounting for *** percent of such production, oppose the petition.³³⁸ We are mindful of the fact that the Commission in past investigations has stated that the degree of petition support by members of the industry is not dispositive as to whether the industry is materially injured.³³⁹ We find it significant, however, that throughout much of the period examined, members of the industry opposing the petition had notably worse financial performance than

³³³ Cutrale and Louis Dreyfus Posthearing Br. at Exhibit 4, pp. 38-39.

³³⁴ CR/PR at III-1. Ten processors submitted financial data.

³³⁵ CR/PR at Table C-3. Production of Florida oranges was 230 million boxes in CY 2001/02, declining to 203 million in CY 2002/03. The orange crop swelled to 242 million boxes in CY 2003/04, then plummeted to only 149.6 million boxes in CY 2004/05. As noted above, the sharp drop in CY 2004/05 reflects the impact of the 2004 hurricanes. CR/PR at Table III-2.

³³⁶ Five of 10 responding processors had fiscal years ending either on August 31 or September 30. For the remaining five, one firm had a fiscal year end of May 31, one had a fiscal year end of June 30, two had fiscal year ends of October 31, and one reported its financial data on a calendar-year basis. CR/PR at VI-1, fn.1. All firms, however, reported consistently for the interim periods of January-September 2004 and January-September 2005.

³³⁷ CR/PR at Table C-4. For purposes of our analysis, we focus on the non-toll operations of the domestic industry.

³³⁸ CR/PR at Table III-5.

³³⁹ See, e.g., Wooden Bedroom Furniture from China, Inv. No. 731-TA-1058 (Final), USITC Pub. 3743 (December 2004), at 29.

members of the industry that supported the petition.³⁴⁰ This suggests, at a minimum, that a significant number of U.S. processors believe that their financial problems cannot be attributed to subject imports.³⁴¹

The divergent pattern in individual companies' financial results may also reflect differences in their geographic location, in terms of whether and to what degree individual companies were affected by the 2004 hurricanes.³⁴² For example, Southern Gardens, with its processing plant in southern Florida, and Sunkist, which is located in California, would not have experienced the production shortfalls attributable to the 2004 hurricanes. These two firms were *** in FY 2004/05. By contrast, firms such as Cargill, Citrosuco NA, Citrus World, and Cutrale USA, with operations in Central Florida, the area hardest hit by the 2004 hurricanes, were *** profitable in that period.³⁴³ Thus, the record indicates that a firm's profitability in FY 2004/05 is directly related to whether the firm had sufficient oranges to process and, therefore, could run its facility more efficiently.

Overall, although we acknowledge that the domestic industry producing certain orange juice, particularly the processing segment, did not perform well at several stages of the period examined, we do not find that there is any significant correlation between subject imports and the performance of the domestic industry. As an initial matter, the record does not indicate that the industry's performance was positively affected by either the filing of the petition or the pendency of the investigation. The petition in this investigation was filed on December 27, 2004. The volume of subject imports, however, increased steadily from December 2004 through April 2005 and, as a whole, was significantly higher in the six-month period January through June 2005 than in the preceding six-month period.³⁴⁴ Moreover, although prices have increased steadily since the filing of the petition in December 2004, prices for FCOJ (the predominant imported product) began to increase in September 2004, three months before the petition was filed, and by December 2004 were at levels approximating those prevailing at the start of the period examined.³⁴⁵

More fundamentally, we conclude that there is no evidence that either the volume of subject imports, or their prices, had any adverse impact on the domestic industry. With regard to volume, as is clear from our data, and as petitioners have conceded, the volume of imports, in and of itself, did not have an impact on production or shipments of the domestic like product.³⁴⁶ As noted in our discussion of the volume of subject imports, when orange juice production declined because of a relatively small domestic orange crop (e.g., in crop years 2002/03 and 2004/05), the volume of imports increased, and when orange juice production increased because of a relatively large domestic orange crop (e.g., in crop years 2001/02

³⁴⁰ For example, in January-September 2005, *** were firms that opposed the petition. Similarly, in FY 2004/05 (the only period in which, in the aggregate, the industry was unprofitable), *** opposed the petition, and ***, accounted for *** share of domestic production. CR/PR at Tables VI-4 and III-5.

³⁴¹ Commissioner Hillman notes that she has examined the condition of the domestic industry as a whole and has not relied on differences in performance related to each company's support or opposition to the petition in reaching her determination that the declines in the overall performance of the processors were not caused by subject imports.

³⁴² CR/PR at Table VI-4.

³⁴³ Id.

³⁴⁴ CR/PR at Table IV-3. Subject imports steadily increased from 8.9 million gallons SSE in December 2004 to 30.6 million gallons SSE in April 2005. For the period January through June 2005, subject imports were 110.6 million gallons SSE, compared with 85.1 million gallons SSE in the period July through December 2004.

³⁴⁵ U.S. prices for FCOJ (product 1) increased irregularly from \$0.78 per pound SE in August 2004 to \$1.00 per pound SE in April 2005. By January 2005, prices had already increased to a level of \$0.95 per pound SE, a 22 percent increase. CR/PR at Table V-1.

³⁴⁶ Hearing Tr. at 88 (Behr).

and 2003/04), the volume of imports declined.³⁴⁷ Hence, we conclude that the role of imports in this market is primarily one of a supplementary supply source.³⁴⁸

With regard to whether the prices of the subject imports had any adverse impact on the domestic industry, in our discussion of the price effects of subject imports we acknowledge that the industry faced a cost-price squeeze during the period examined. We do not, however, attribute that cost-price squeeze in any significant way to subject imports. There is no link between any cost-price squeeze and the price of subject imports during the period. For example, between FY 2002/03 and FY 2004/05, the ratio of COGS to sales increased steadily from *** percent of sales in FY 2002/03 to *** percent of sales in FY 2003/04, then increased again to *** percent of sales in FY 2004/05.³⁴⁹ Yet, during this period, the prices of subject imports of FCOJ showed no particular pattern, remaining more or less constant until early 2004 (the approximate midpoint of FY 2003/04 for most processors), then declining sharply until mid-2004 before reversing direction and increasing toward the end of the period.³⁵⁰ The lack of any relationship between the processors' ratio of COGS to sales and import prices is even clearer when the interim periods are examined. In January-September 2004, when domestic processors' COGS-to-sales ratio was 90.1 percent, subject import FCOJ prices ranged between \$*** and \$*** per pound SE and were generally declining.³⁵¹ By contrast, in January-September 2005, when the COGS-to-sales ratio increased to 93.3 percent, subject import FCOJ prices ranged between \$*** and \$*** percent and were generally increasing. Hence, it is far more likely that any cost-price squeeze experienced by the processors over the period was caused by other factors, most likely the lower volume of sales caused by the impact of the 2004 Florida hurricanes.³⁵²

Further, there is no evidence of a causal link between trends in prices and the financial performance of the domestic industry. With regard to the interim periods, the operating income of the industry was lower in January-September 2005 than in January-September 2004.³⁵³ Both U.S. and subject import prices, however, were rising during January-September 2005, and were at higher levels than

³⁴⁷ Specifically, U.S. processors' production declined from 1.4 billion pounds in CY 2001/02 to 1.2 billion pounds in CY 2002/03, increased to 1.5 billion pounds in CY 2003/04, then plummeted to only 965 million pounds in CY 2004/05. The pattern of subject imports, by contrast, showed an increase in CY 2002/03 to 227 million pounds from their level of 110 million pounds in CY 2001/02. In CY 2003/04, imports declined to 154 million pounds, and then increased in CY 2004/05 to 232 million pounds. CR/PR at Table C-3.

³⁴⁸ While there were no verified lost sales or revenue allegations, we note that this is not surprising in a commodity agricultural market. CR/PR at Table V-4.

³⁴⁹ CR/PR at Table C-4.

³⁵⁰ CR/PR at Table V-1 (product 1). Until January 2004, prices of subject imported FCOJ fluctuated within a relatively narrow band from \$0.88 per pound SE to \$1.06 per pound SE. These prices then declined irregularly to a low point of \$0.61 per pound SE in May 2004, then rose to a level of \$*** per pound SE in December 2004. During the period January through September 2005, such prices fluctuated between \$*** and \$*** per pound SE.

³⁵¹ CR/PR at Tables C-4 & V-1.

³⁵² Cutrale and Louis Dreyfus Posthearing Br. at Exhibit 7 (Florida's Natural attributing higher production costs to lower fruit volumes). Moreover, with regard to the growers, USDA data show that the prices received by growers in CY 2004/05 increased over their CY 2003/04 level at a greater rate than did costs to growers, as reflected in responses to Commission questionnaires. While costs per box increased from \$4.89 in FY 2003/04 to \$5.31 in FY 2004/05, USDA data show that price per box showed an even greater increase, from \$4.95 per box in CY 2003/04 to \$5.44 per box in CY 2004/05. CR/PR at table VI-15; Cutrale and Louis Dreyfus Posthearing Br. at Exhibit 4, pp. 38-39. Thus, although crop year and fiscal year data may not be directly comparable, and grower coverage through questionnaires is limited, available record evidence does not show that growers experienced any cost-price squeeze during the period examined.

³⁵³ In January-September 2004, the ratio of operating income to sales was *** percent, compared with *** percent in the interim period January-September 2005. CR/PR at Table C-4 (non-toll operations).

during January-September 2004.³⁵⁴ Similarly, the domestic industry experienced its worst financial performance (a loss of *** percent of sales) during FY 2004/05.³⁵⁵ Yet, for most processors, this period corresponds to a period during which both U.S. and subject import prices were rising, not falling.³⁵⁶ By contrast, during the period January-September 2004, domestic processors were profitable, with a ratio of operating income to sales of *** percent, even though during this period, prices were at their lowest level during the period examined.³⁵⁷ From these trends, it is evident that the financial performance of the domestic industry is heavily dependent on the availability of oranges for processing . In particular, the relatively poor performance of domestic processors in fiscal year 2004/05 reflects the impact of the Florida hurricanes in late 2004 (which resulted in lower volumes of oranges processed) and the relatively good performance of those processors in January-September 2004 and in earlier periods reflects the greater volumes of oranges processed in those periods.

Consequently, because we can find no causal link between either the volume of subject imports, or the prices of such imports, and the condition of the domestic industry during the period examined, we do not find that subject imports are having an adverse impact on the domestic industry. Based on the record in the final phase of this investigation, and in light of our analysis of the significance of the volume, price effects, and impact of the LTFV sales of subject imports, we determine that an industry in the United States is not materially injured by reason of imports of certain orange juice from Brazil that is sold in the United States at less than fair value.

III. NO THREAT OF MATERIAL INJURY BY REASON OF SALES OF SUBJECT IMPORTS 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.”³⁵⁸ 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

³⁵⁴ In January-September 2005, the prices of subject imports rose from \$*** per pound SE in January 2005 to \$*** per pound SE in September 2005, while U.S. prices rose from \$0.95 per pound SE in January 2005 to \$0.98 per pound SE in September 2005. In January-September 2004, U.S. prices ranged between \$0.75 per pound SE and \$0.94 per pound SE, while the prices of subject imports ranged between \$*** per pound SE and \$*** per pound SE. CR/PR at Table V-1.

³⁵⁵ CR/PR at table C-4.

³⁵⁶ For all responding processors except ***, the 2004/05 fiscal year began no earlier than September 1, 2004. Starting in September 2004, U.S. prices for product 1 (FCOJ) rose from \$0.83 per pound SE to \$0.95 per pound SE in January 2005, and then fluctuated between \$0.93 per pound SE and \$1.01 per pound SE for the remainder of the period examined. Similarly, subject import prices for product 1 rose overall from \$0.74 per pound SE in September 2004 to \$*** per pound SE in January 2005, and then fluctuated between \$*** per pound SE and \$*** per pound SE for the remainder of the period. CR/PR at Table V-1.

³⁵⁷ CR/PR at Tables C-4 and V-1. During January-September 2004, U.S. prices of product 1 (FCOJ) ranged between \$0.75 per pound SE and \$0.94 per pound SE, whereas subject import prices ranged between \$*** per pound SE and \$*** per pound SE.

³⁵⁸ 19 U.S.C. § 1677(7)(F)(ii).

material injury by reason of imports would occur unless an order is issued.³⁵⁹ In making our determination, we considered all statutory factors that are relevant to this investigation.³⁶⁰

As an initial matter, as discussed above in our discussion of conditions of competition, we recognize that Brazil is the largest producer and exporter of orange juice in the world, and that capacity to produce the subject product in Brazil increased markedly from crop years 2001/02 to 2004/05.³⁶¹ We note, however, that the more relevant measure of capacity in this industry is the number of bearing trees and the expected yield of oranges from those trees, not the capacity of processors to produce orange juice, since processors can only process the fruit that is available to them in each crop year. In that regard, the orange crop in Brazil is expected to be significantly smaller in the current crop year (2005/06).³⁶² Moreover, the number of bearing trees in Brazil did not increase significantly during the period examined.³⁶³ We are mindful of the fact that Brazil (specifically Fischer-Citrosuco) has recently increased its capacity to ship NFC through its commissioning of additional tankers, but the record does not indicate any corresponding expansion in the ability of Brazilian producers' U.S. customers to store or process such additional product in the United States.³⁶⁴

Although the Brazilian industry is clearly export-oriented, the record indicates that Brazil's largest export market, by far, is the European Union.³⁶⁵ In that regard, we find it significant that the volume of exports from Brazil to Europe increased steadily throughout the period examined, in contrast to the pattern of the volume of exports from Brazil to either the United States, which fluctuated in response to changes in the size of the U.S. orange crop, or Asia, which fluctuated in line with variations in Brazilian orange juice production.³⁶⁶ This suggests that, during the period examined, the Brazilian industry was using its substantial orange juice inventories to maintain its growing business in Europe, and therefore indicates that it is less likely that the Brazilian industry will target the U.S. market in the event an antidumping order is not imposed in this investigation.

Further, the record does not indicate a significant rate of increase of the volume or market penetration of the subject imports indicating the likelihood of substantially increased imports. Although subject import volume and market penetration did show a large increase both in terms of volume and market penetration between CY 2003/04 and CY 2004/05, as discussed above we found that these increases were due to the large drop in Florida orange production caused by the impact of the 2004 Florida hurricanes. As noted earlier, we view imports as a necessary component of the domestic industry and the record indicates that any increase in the volume of subject imports is directly related to the level of domestic production. In any event, notwithstanding year-over-year increases in the volume of imports in crop years 2002/03 and 2004/05, the volume of subject imports during the period examined was

³⁵⁹ *Id.*

³⁶⁰ 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.

³⁶¹ CR/PR at VII-2 & Table VII-4.

³⁶² CR/PR at Table VII-1. Production of oranges in CY 2005/06 is projected to be 406 million boxes, down from 467 million boxes in CY 2004/05.

³⁶³ *Id.* The number of bearing trees increased very slightly over the four years examined from 209 million trees in CY 2001/02 to 211 million trees in CY 2004/05.

³⁶⁴ Petitioners' Posthearing Br. at Attachment 1, p. 60.

³⁶⁵ CR/PR at Table VII-4.

³⁶⁶ CR/PR at Table VII-4. The volume of exports from Brazil to the European Union increased from *** million pounds solids in CY 2001/02 to *** million pounds solids in CY 2002/03, to *** million pounds solids in CY 2003/04, and finally to *** billion pounds solids in CY 2004/05. This volume increased in CY 2003/04 notwithstanding a substantial drop in production, and in contrast to declines in exports to both the United States and Asian markets.

markedly less than during much of the period since 1990.³⁶⁷ Thus, we do not consider the likelihood of increased imports to be a significant factor in assessing threat of injury in this industry.

With regard to whether there are any trade restrictions in third-country markets that would provide an incentive for Brazilian exporters to increase shipments to the United States, the record indicates that there are no significant barriers in those markets to shipments from Brazil, other than normal customs tariffs, which are generally rather high.³⁶⁸ Finally, there is no significant potential for product-shifting in this industry. Although most Brazilian producers produce other juices in their orange juice processing facilities, orange juice represents a substantial majority of total production of those facilities for all producers.³⁶⁹

Accordingly, we find that material injury by reason of subject imports will not occur absent issuance of an antidumping order against the subject imports. We therefore conclude that the domestic industry producing certain orange juice is not threatened with material injury by reason of the subject imports.

CONCLUSION

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

³⁶⁷ CR/PR at Figure IV-1.

³⁶⁸ CR at VII-8, n. 25; PR at VII-7, n. 25.

³⁶⁹ CR/PR at Table VII-3.

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 in the following tabulation.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 25, 2005	Commerce’s extension of initiation (70 FR 3510)
February 11, 2005	Commerce’s initiation of investigation (70 FR 7233)
March 7, 2005	Commission’s preliminary determination (70 FR 20595, April 20, 2005)
August 24, 2005	Commerce’s preliminary determination (70 FR 49557); scheduling of the final phase of the Commission’s investigation (70 FR 53251, September 7, 2005)
January 6, 2006	Commerce’s final determination (71 FR 2183, January 13, 2006)
January 10, 2006	Commission’s hearing ¹
February 8, 2006	Commission’s vote
February 21, 2006	Commission’s determination to Commerce

¹ A list of witnesses appearing at the hearing 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 Commerce on January 27, 2005, Peace River stated that it opposed the petition until resolution of the then ongoing sunset review of the existing order on frozen concentrated orange juice from Brazil.

³ A complete description of the imported products subject to this investigation is presented in *The Product* section of this part of the report. Subject certain orange juice from Brazil includes imports of both: (1) FCOJM manufactured/exported by Cargill Citrus Limitada (“Cargill Brazil”), Coinbra-Frutesp (“Coinbra”), Fischer S/A - Agroindustria (formerly Citrosuco Paulista S.A.) (“Fisher/Citrosuco”), Montecitrus Industria e Comercio Limitada (“Montecitrus”), and Sucocitrico Cutrale, S.A. (“Cutrale”) in Brazil, and (2) NFCOJ manufactured/exported by all firms in Brazil. (The Department of Commerce made an affirmative determination that Coinbra is the successor-in-interest to Frutropic.)

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, 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 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-1.⁵ Currently, there are no outstanding antidumping or countervailing duty orders on imports of orange juice from Brazil.

Table I-1
FCOJM from Brazil: Previous investigations

Investigation No.	Date	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	3760	Negative

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 investigation includes those manufacturers/exporters of FCOJM in Brazil that were excluded or revoked from the antidumping duty order on FCOJM from Brazil which was revoked in March 2005. 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 25 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 ***, ***, and ***. 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 ***, and ***. The largest importer of FCOJM from Brazil in 2004/05 was ***.⁶ Other major importers of Brazilian FCOJM are *** and ***. Only two firms reported imports of NFCOJ from Brazil, *** and ***. *** is believed to be one of the largest producer of organic orange juice.⁷ *** reported imports of organic FCOJM.

NATURE AND EXTENT OF SALES AT LTFV

Commerce made an affirmative final determination that certain orange juice from Brazil is being, or is likely to be, sold in the United States at less than fair value. Commerce also made an affirmative determination that critical circumstances exist with respect to the subject merchandise exported from Cutrale, Montecitrus, and all others, and made a negative critical circumstances determination for Fischer/Citrosuco.⁸ Commerce's final margins are presented below.

Exporter/Manufacturer	Weighted-average margin (percent ad valorem)
Cutral	19.19
Fischer	9.73
Montecitrus	60.29
All Others	15.42

THE SUBJECT PRODUCT

Commerce has defined the imported merchandise subject to investigation as:⁹

certain orange juice for transport and/or further manufacturing, produced in two different forms: (1) frozen orange juice in a highly concentrated form, sometimes referred to as frozen concentrated orange juice for further manufacturing (FCOJM); and (2) pasteurized single-strength orange juice which has not been concentrated, referred to as NFC (Not-From-Concentrate) . . . the scope of this investigation with regard to FCOJM covers only FCOJM produced and/or exported by those companies which were excluded or revoked from the pre-existing antidumping order on FCOJ from Brazil as of

⁶ ***.

⁷ ***.

⁸ 71 FR 2183, January 13, 2006.

⁹ Ibid.

December 27, 2004. Those companies are Cargill, Coinbra,¹⁰ Cutrale, Fisher, and Montecitrus.¹¹

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.

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.

The petitioners contend that there is one domestic like product consisting of FCOJM and NFCOJ, coextensive with the scope of the investigation.¹² Respondents Citrusuco, and Tropicana contend that FCOJM and NFCOJ are separate like products.¹³ Respondents Cutrale, Louis Dreyfus, and Coca-Cola contend that FCOJM and NFCOJ are one like product.¹⁴ Respondent Montecitrus Group (“Montecitrus”), a Brazilian processor of organic orange juice, asserts that organic orange juice should be a separate product, and that the Commission should find four separate like products: conventional FCOJM and NFCOJ and organic FCOJM and NFOCJ.^{15 16} For purposes of its preliminary determination,

¹⁰ Commerce determined that Coinbra is the successor-in-interest to Frutropic.

¹¹ 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, all applicable to imports from Brazil; this rate was not reduced as a result of the Uruguay Round of Trade Negotiations. No GSP preference exists.

¹² Petitioners’ prehearing brief, pp. 1-4.

¹³ Respondent Citrusuco’s prehearing brief, pp. 2-11, Respondent Tropicana’s prehearing brief, pp. 3-21.

¹⁴ Respondents Cutrale/Louis Dreyfus’ posthearing brief, p. 2, fn. 1, and Respondent Coca-Cola’s prehearing brief, pp. 1-2.

¹⁵ Respondent Montecitrus’ prehearing 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 (“NOP”) 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.’” Respondent Montecitrus’ prehearing brief, p. 4.

¹⁶ 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. Respondent Montecitrus’ prehearing brief, pp. 4-40.

the Commission found a single domestic like product consisting of both FCOJM and NFCOJ,¹⁷ and included organic orange juice in the like product definition.¹⁸

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 F or lower in a tank farm or in 55-gallon drums until it is sold or packaged for sale.¹⁹

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 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.²⁰

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.²¹

With respect to organic orange juice, the U.S. Department of Agriculture 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. citrus fruit acreage during 2001. Florida accounted for 6,052 acres of organic citrus in 2001. 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.²² However, organic oranges typically yield a higher brix level.²³ Organic orange juice is typically shipped at the wholesale level in smaller containers than nonorganic orange juice. At the retail level organic orange juice is sold in similar containers and forms as nonorganic orange juice, for example with or without pulp, and with or without calcium and added vitamins,²⁴ but only organic orange juice can be marketed with the USDA "organic" label in accordance with NOP Regulations. Organic FCOJM is used almost exclusively used to produce FCOJR.²⁵ The majority of the organic orange juice market is NFC orange juice and sells for a premium of up to 100 percent when compared to nonorganic.²⁶

¹⁷ USITC Publication 3757, March 2005, p. 7. Vice Chairman Okun, and Commissioners Hillman and Pearson found FCOJM and NFCOJ to be separate domestic products. *Ibid.*, p. 26.

¹⁸ *Ibid.*, p. 8, fn. 47.

¹⁹ Petition, p. 48.

²⁰ Petition, pp. 48-49.

²¹ See comments of *** in appendix D, p. D-5.

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

²³ Conventional fertilizers causes plants to grow quickly, causing crops to soak up more water. Respondent Montecitrus' prehearing brief, p. 18.

²⁴ Organic orange juice does not contain the same calcium additives as nonorganic orange juice. Respondent Montecitrus' prehearing brief, p. 59.

²⁵ Respondent Montecitrus' prehearing brief, p. 18-19.

²⁶ Staff telephone interview with ***, February 22, 2005.

Manufacturing Processes, Facilities, and Employees

Orange juice is manufactured directly from oranges, almost exclusively round oranges.²⁷ 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, 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 11.8 degrees.²⁸ Figure I-1 presents a flow diagram of orange juice production.

Figure I-1
Orange juice: Process flow diagram

* * * * *

Up until this point, orange juice intended for the NFCOJ market and the FCOJM 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. It is eventually packaged into retail size containers.

Orange juice intended for the concentrate market is further processed 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.²⁹ The juice may be transported in 55-gallon drums or bulk

²⁷ 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.

²⁸ 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.

²⁹ The high sugar level in 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.

storage tanks.³⁰ 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.

Under the NOP Regulations, organic groves must be separate from conventional orange groves. Geographically, there must be a sufficient “buffer zone” between organic and conventional farms to ensure that synthetic pesticides and fertilizers do not accidentally reach an organic grove. Temporally, a farm must be three-years removed from any use of synthetic pesticides or fertilizers before the farm can market its fruit using the organic label.³¹ Harvested organic oranges may not be commingled with conventional oranges or in contact with residues from synthetic pesticides or fertilizers. The management of organic groves is more labor intensive, and the yields can be lower than for non-organic groves.³² There are over 30 growers the acreage certified for organic citrus in Florida.³³ 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.³⁴ Organic orange juice processors must also comply with NOP Regulations in order to use the organic label. For example, a processing facility must have separate organic “runs” through the plant, and the facility must clean all of its equipment prior to the runs.³⁵

Nine extractor/processors reported production of both FCOJM and NFCOJ in their U.S. facilities, and the firms accounted for more than three-quarters of U.S. production of certain orange juice during crop year 2004/05. The Commission’s received one questionnaire from an extractor producing FCOJM and organic NFCOJ.³⁶

Interchangeability and Customer and Producer Perceptions

As defined by the scope of the investigation, FCOJM, NFCOJ, and organic FCOJM and NFCOJ, are forms of bulk orange juice for transport and/or further manufacturing, and are all ultimately used to produce ready-to-drink single strength orange juice sold at retail. Some industry participants reported

³⁰ 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.

³¹ Respondent Montecitrus’ prehearing brief, p. 7. If a grower does not comply with NOP Regulations, but sells oranges using the organic label, the grower is subject to penalties of \$10,000 per violation. Respondent Montecitrus’ prehearing brief, p. 9.

³² Respondent Montecitrus’ prehearing brief, p. 9, fn. 32.

³³ Respondent Montecitrus’ prehearing brief, p. 10.

³⁴ Staff telephone interview with ***, February 22, 2005.

³⁵ Respondent Montecitrus’ prehearing brief, p. 12.

³⁶ 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 organically grown oranges into orange juice. Staff telephone interview with ***, February 23, 2005.

that bulk FCOJM and NFCOJ are interchangeable in producing single strength, ready to serve juice.³⁷ 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.³⁸ Because of NOP Regulations, wholesale organic purchasers of orange juice cannot source nonorganic orange juice for use in organic products.³⁹ Nonorganic wholesale purchasers would typically not source organic oranges and orange juice because of the price premium. 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 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

³⁷ See comments of *** in appendix D.

³⁸ See comments of *** in appendix D.

³⁹ Respondent Montecitrus’ prehearing brief, p. 25.

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 OJ 6
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	11.5:1 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.		

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 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 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 majority of U.S.-produced certain orange juice and 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.⁴⁰

Table I-3
Certain orange juice: Channels of distribution, crop years 2001/02-2004/05

* * * * *

⁴⁰ The Coca Cola Company argued that bulk FCOJM and NFC are delivered to the same facility for further processing and packaging. It cited its contract with *** which provides that "****." Respondent Coca-Cola's posthearing brief, p. 8, fn. 5, and exh. 2, p. 5, para. 6; and e-mail from Nancy Noonan, counsel to Coca-Cola, January 25, 2006. Coca-Cola reported that "****." E-mail from Nancy Noonan, counsel to Coca-Cola, January 31, 2006.

Organic oranges, because they are not allowed to be commingled with nonorganic oranges, are not delivered or stored in the same containers as nonorganic oranges. Organic-specific distributors typically sell their oranges to smaller juice processing plants, and organic orange juice is distributed to organic-certified retail warehouses.⁴¹ Organic orange juice is distributed almost exclusively for retail sale in grocery stores.

Price

The cost of fresh oranges (for processing), accounts for the majority of the value of the product, and is the same for both FCOJM and NFCOJ. 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. The price for bulk shipments of organic FCOJ and NFCOJ carries a premium over nonorganic FCOJ and NFCOJ. Average unit values compiled from questionnaire responses for FCOJM, NFCOJ, and organic FCOJM and NFCOJ, are presented in table I-4. Pricing practices and prices reported for certain orange juice in response to Commission questionnaires are presented in Part V of this report.

Table I-4
Certain orange juice: Average unit values, by type and source, crop years 2001/02-2004/05

(Per pound solids equivalent, except as noted)

Item	Crop year			
	2001/02	2002/03	2003/04	2004/05
U.S. commercial shipments of U.S.-produced product:				
FCOJM (nonorganic) ¹	\$0.99	\$1.03	\$0.86	\$0.95
NFCOJ (nonorganic) ¹	1.24	1.28	1.24	1.31
NFCOJ (organic) ²	***	***	***	***
Average	***	***	***	***
NFCOJ/FCOJM premium (<i>percent</i>)	***	***	***	***
U.S. shipments of imports from Brazil: subject:				
FCOJM (nonorganic) ¹	0.94	0.97	0.80	0.85
FCOJM (organic) ¹	***	***	***	***
NFCOJ (nonorganic) ¹	1.53	1.56	1.43	1.50
Average	***	***	***	***
NFCOJ/FCOJM premium (<i>percent</i>)	***	***	***	***
¹ Unit values compiled from pricing data reported for products 1, 2, and 3 (see Part V of this report). ² Unit values are for reported internal consumption as no U.S. commercial shipments were reported by Silver Spring.				
Source: Compiled from data submitted in response to Commission questionnaires.				

⁴¹ A significant volume of organic orange juice is distributed to the retail warehouses of Whole Foods and Trade Joe's, both of which are certified organic. Respondent Montecitrus' prehearing brief, p. 23.

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

U.S. MARKET SEGMENTS

Both FCOJM and NFCOJ are sold to retail and food service outlets, producers of various food products, dairy processors, 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; this responsiveness moderated by the unavailability of industry capacity due to the fixed supply of juice oranges, the main raw material for FCOJM and NFCOJ.

Industry capacity

U.S. extractor/processors' reported capacity utilization for FCOJM decreased from 91.0 to 43.3 percent from crop years 2001/02 to 2004/05. U.S. extractor/processors' reported capacity utilization for NFCOJ decreased from 76.1 to 75.8 percent from crop years 2001/02 to 2004/05. This level of capacity utilization indicates that U.S. extractor/processors of FCOJM and NFCOJ have some excess 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. Juice processors purchase approximately 95 percent of Florida fresh orange production.

Alternative markets

Domestic extractor/processors' export shipments of FCOJM decreased from 13.0 percent of total shipments in 2001/02 to 8.9 percent of total shipments in 2004/05, while their export shipments of NFCOJ fell from 4.2 percent of total shipments in 2001/02 to 2.5 percent of total shipments in 2004/05. Domestic extractor/processors' export shipments of all certain orange juice decreased from 9.0 percent of total shipments in 2001/02 to 4.9 percent of total shipments in 2004/05. These data indicate that U.S. extractor/processors have some ability to divert shipments of total certain orange juice and FCOJM to or from alternative markets in response to changes in price, 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 30.9 percent of their shipments in 2001/02 to 51.7 percent in 2004/05. U.S. extractor/processors' inventories of NFCOJ, as a percentage of total shipments, decreased from 25.8 percent of their shipments in 2001/02 to 25.0 percent in 2004/05. 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 produce other products using the same equipment and machinery and/or the same production and related workers employed to certain orange juice. 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 In crop year 2004/05, four of 11 responding processor/extractors (***) reported producing other products (such as grapefruit and other juices) on the same equipment and using the same production and related workers to produce certain orange juice (see table III-9).

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 increased from *** percent in 2001/02 to *** percent in 2004/05, and for NFCOJ it increased from *** percent to *** percent between 2001/02 and 2004/05. 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 (i.e., their home market and other export markets) decreased from *** percent of shipments in 2001/02 to *** percent of shipments in 2004/05, and their shipments of NFCOJ to other markets decreased from *** percent of shipments to *** percent of shipments between 2001/02 and 2004/05. 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 2001/02 to *** percent in 2004/05, and for NFCOJ increased from *** percent of shipments in 2001/02 to *** percent in 2004/05. 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

Some Brazilian extractor/processors reported they can produce other products using the same equipment and machinery used in production of certain orange juice. In crop year 2004/05, three of five responding Brazilian extractor/processors (***) reported producing other products (such as grapefruit, tangerine, lemon, lemon-lime, and other juices) on the same equipment and machinery used to produce certain orange juice.

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 the low degree of responsiveness of demand for orange juice at the retail level, the typically moderate cost share of major 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.

Six of 18 responding extractor/processors, none of four responding importers, four of five responding extractor/processor/importers² and 13 of 20 responding purchasers indicated that demand for all certain orange juice had decreased since 2002; one responding extractor/processor/importer indicated that demand has increased. 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.³ Respondents also indicated that demand is down since 2001.⁴

One extractor/processor/importer indicated that demand for NFCOJ has increased since 2002, while one importer indicated that demand for organic FCOJM has increased since 2002. Other extractor/processors and importers also cited a trend in consumer preferences away from FCOJM toward NFCOJ and less-than-100-percent juices.

Seven of eighteen responding purchasers indicated that demand for their firm's final products incorporating certain orange juice decreased since January 1, 2002. Eight responding purchasers indicated that demand for their firm's final products were unchanged and the three remaining responding purchasers indicated that demand increased. Eight purchasers indicated that changes in demand for their product affect their demand for certain orange juice, while four purchasers indicated that changes in demand for their product did not affect their demand for certain orange juice.

As seen in table II-1, three of seven responding extractor/processors, none of the two responding importers, two of five responding extractor/processor/importers, and two of 19 responding purchasers

² Firms which responded to both the U.S. extractor/processor and importer questionnaires are referred to as "extractor/processor/importers" when describing their responses to questions which appeared in both the U.S. extractor/processor and importer questionnaires. These firms are ***.

³ Conference transcript, p. 46 (Warlick).

⁴ Conference transcript, p. 111 (Tilley) and p. 131 (Thompson).

Table II-1

Certain orange juice: Perceived degree of impact of various supply factors on apparent consumption

Supply factor	Number of U.S. extractor/processors reporting			Number of U.S. importers reporting			Number of U.S extractor/p rocessor/ importers reporting			Number of U.S purchasers reporting		
	V	S	N	V	S	N	V	S	N	V	S	N
Brazilian juice orange crop	2	3	2	0	0	2	1	1	3	7	7	8
Disease	0	6	1	0	0	2	1	2	2	3	9	8
Nonsubject imports of certain orange juice ¹	1	2	4	0	1	1	0	2	3	0	7	12
Packaging	1	1	5	0	1	1	0	1	4	0	7	14
Subject imports of certain orange juice	3	1	3	0	0	2	2	0	3	2	7	10
U.S. juice orange crop	1	5	1	1	1	0	4	0	1	14	5	3
U.S. inventories of certain orange juice	1	5	1	0	1	1	1	2	2	12	7	2
Weather	2	5	0	1	1	0	2	1	2	14	8	2
Brazilian futures deliveries	1	0	0	0	0	0	0	0	0	0	0	0

Note.—V=very important; S=somewhat important; N=not important.

¹ Does not include one response of “very important, not important” from a purchaser. In its purchaser questionnaire response, *** responded “not important” and indicated that “this is anticipated to change dramatically if the Citrovita/Vitorine/US Sugar/Southern Gardens combine has free access to US mkt.”

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

indicated that the impact of subject imports of certain orange juice on apparent consumption of certain orange juice within the United States since January 1, 2002 was “very important”, while three of seven responding extractor/processors, both responding importers, three of five responding extractor/processor/importers, and 10 of 19 responding purchasers indicated that the impact was “not important.” At least one-half of responding extractor/processors, importers, extractor/processor/importers, and purchasers indicate the impact of nonsubject imports and packaging of certain orange juice on apparent consumption were “not important.” Also, over one-half of responding purchasers indicated that the impact of the U.S. juice orange crop, U.S. inventories of certain orange juice, and the weather on apparent consumption were “very important.”

Substitute Products

Three of the six responding extractor/processors, one of three responding importers, three of four responding extractor/processor/importers, and seven of 16 responding purchasers 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. One of two responding extractor/processors, both responding

importers, two of four responding extractor/processor/importers, and four of 12 responding purchasers indicated that changes in the prices of these substitute products affect the price of certain orange juice. One purchaser (***) indicated that prices for other goods adjust to the price of FCOJM.

Cost Share

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 generally lower. Extractor/processors and importers reported cost shares ranging from approximately 20 percent for retail concentrate to 100 percent for single-strength orange juice.

Seven purchasers reported that reconstituted orange juice was the only product produced using FCOJM, with four additional purchasers indicating that it accounted for 20 to 95 percent of the total value of their firm's purchases of FCOJM. These purchasers reported that cost shares for FCOJM ranging from 33 percent to 100 percent. ***. Three purchasers reported that retail orange juice was the only product it produced using FCOJM, with three additional purchasers indicating that it represented 70 to 95 percent of the total value of their firm's purchases of FCOJM. These firms reported cost shares for FCOJM ranging from 50 percent to 90 percent.

Five of six responding purchasers reported that NFCOJ in retail form accounted for 50 to 100 percent of the cost of retail orange juice, while the remaining responding purchaser (***) indicated that it accounted for 15 percent of the cost of retail orange juice. ***. All six of these purchasers reported that retail orange juice was the only end product they produced using NFCOJ as an input.

SUBSTITUTABILITY ISSUES

The degree of substitution between domestic and imported FCOJM and between domestic and imported 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 certain orange juice from the United States and from Brazil and other import sources.

Factors Affecting Purchasing Decisions

Purchasers were asked a variety of questions to determine what factors influence their decisions when buying certain orange juice. Information obtained from their responses indicates that several factors are considered important by purchasers, including quality and price.

More purchasers (16 of 26) indicated that quality was the number one factor and one of the top two factors (19 of 26 responding purchasers) used in their purchasing decisions, than any other factor. However, more responding purchasers (20 of 26) indicated that price was one of the top three factors used in their purchasing decisions.

More, or just as many, purchasers indicated that availability, product consistency, and reliability of supply were "very important" factors in their purchasing decisions as those that indicated that price was a "very important" factor. In addition to these factors, more purchasers indicated that color and delivery time were "very important" factors in their purchasing decisions than those that indicated that quality meeting industry standards was a "very important" factor.

As indicated in table II-2, while price was named by only one of 26 responding purchasers as the number one factor generally considered in deciding from whom to purchase certain orange juice, it was named by nine purchasers as the number two factor and the number three factor by 10 other responding purchasers. Also, as indicated in table II-3, 23 of 26 of the responding purchasers indicated that price was a “very important” factor in their purchase decisions, while only one responding purchaser indicated that price was “not important.” However, only one of 25 responding purchasers indicated that their firm would “always” purchase certain orange juice that is offered at the lowest price,⁵ while 16 responding purchasers indicated that they would “sometimes” purchase certain orange juice that is offered at the lowest price. Five responding purchasers indicated that the lowest-priced orange juice “usually” will win a sale and the remaining three reported “never.”

Quality was identified by 16 of the 26 responding purchasers as the number one factor generally considered in deciding from whom to purchase certain orange juice, while three other responding purchasers indicated that it was the number two factor. Twenty of 25 responding purchasers indicated that quality meeting industry standards was a “very important” factor in their purchasing decisions and 11 of 25 responding purchasers indicated that quality exceeding industry standards was a “very important” factor in their purchasing decision. Purchasers named a number of factors they consider in evaluating quality including: flavor, color, pulp, brix to acid ratio, temperature, taste, acid, mouth feel, defects, taste, USDA grades and scores, appearance, pH, bacteria count, yeast and mold count, nutrition, fruit type, manufacturing process, oil level, viscosity, nutrient content, agricultural residues, limonin content, country of origin, chemistry, micro biological tolerances, organic certification, pesticide tolerance, and consistency.

Twenty-three of 25 purchasers reported that they required suppliers of at least some of their 2004 purchases to become certified or prequalified, with 21 of these purchasers indicating they required suppliers of all of their 2004 purchases to become certified or prequalified. Six purchasers reported that since 2002 one or more suppliers have failed in their attempts to qualify certain orange juice.

As indicated in table II-4, over one-half of responding purchasers indicated that in terms of color, ingredients, viscosity, packaging, vitamin and mineral content, shelf life and brix level FCOJM was comparable to that of NFCOJ.

Petitioners claim that competition for certain orange juice is based solely on price.⁶ They argued that any difference in color, flavor (Brix-acid ratio), and defects that a given quantity of FCOJM has does not have a measurable effect on price.⁷ 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.⁸ 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.⁹

⁵ This one purchaser (***) indicated that it “always” purchases orange juice offered at the lowest price, as long as the product is approved by “R&D”.

⁶ Petitioners’ postconference brief, p. 33.

⁷ Ibid.

⁸ Conference transcript, pp. 191-192 (Tilley).

⁹ Conference transcript, p. 190 (Tilley).

Table II-2
Certain orange juice: Ranking of factors used in purchasing decisions as reported by U.S. purchasers

Factor	Number of firms reporting		
	Number one factor	Number two factor	Number three factor
Quality	16	3	0
Availability	2	4	3
Prearranged contracts	2	2	1
Price ¹	1	9	10
Extension of credit	1	0	1
USDA grade	1	0	2
Reliability of supply	0	3	1
Service	0	1	3
Consistency of supply	0	1	1
Specifications	0	1	0
Other ²	3	2	2

¹ Includes one response of "cost-contract," as the number 3 factor.

² Other factors include one response each for "all Florida" and "OJ produced at authorized facility," and "our need" for the number one factor; one response of "flavor-brix/acid ratio," "guarantee of supply" for the number two factor; one response each of "color," and "safety," as the number 3 factor.

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

Table II-3
Certain orange juice: Importance of factors used in purchasing decisions as reported by U.S. purchasers

Factor	Number of firms reporting		
	Very important	Somewhat important	Not important
Availability	25	1	0
Product consistency	25	1	0
Reliability of supply	23	3	0
Price	23	2	1
Color	21	5	0
Delivery time	21	4	1
Quality meets industry standards	20	4	1
U.S. transportation costs	15	7	3
Delivery terms	13	11	1
Extension of credit	13	4	8
Viscosity	11	12	2
Quality exceeds industry standards	11	11	3
Technical support/service	10	12	3
Product range	8	9	8
Discounts offered	6	10	9
Packaging	5	12	6
Minimum quantity requirements	3	10	12
Specifications ¹	2	0	0
Duty drawback ¹	1	0	0
Micro-limits ¹	1	0	0

¹ Factor added by purchaser(s) in questionnaire response(s).

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

Table II-4

Certain orange juice: Comparisons between FCOJM and NFCOJ as reported by U.S. purchasers

Factor	Number of firms reporting		
	FCOJM superior	Comparable	FOCJM inferior
Color	2	15	2
Ingredients	1	14	2
Viscosity ¹	2	14	2
Packaging	4	14	1
Vitamin and mineral content	1	13	4
Shelf life	6	12	0
Brix level	3	13	0
Convenience	8	8	2
Customer desirability ²	1	0	0
Mouth feel and fresh notes ²	0	0	1
Flavor ²	1	0	1
Taste ²	1	0	2

¹Does not include a response of *** of “superior and comparable”.
²Factor added by purchaser(s) in questionnaire response(s).

Note: *** did not respond and indicated that FCOJM is not comparable to NFCOJ. One purchaser (***) indicated that its response (which was “comparable” in each instance) is based on FCOJM reconstituted to single strength orange juice compared with NFCOJ.

Nine responding purchasers reported purchasing both FCOJM and NFCOJ in their questionnaire responses (only eight of these purchasers responded for brix level). Eight of nine of these purchasers indicated that color and ingredients are “comparable;” seven of nine of these purchasers indicated that viscosity, packaging, and vitamin and mineral content are “comparable;” six of eight of these responding purchasers indicated that brix level is “comparable;” six of nine of these purchasers indicated that shelf life is “comparable;” and five of nine of these purchasers indicated that convenience is “comparable.”

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

Louis Dreyfus claimed that the importance of price depends on the level in the distribution chain and the purchaser.¹⁰ It argued that price is “pretty important” with Wal-Mart, one of its biggest customers, and that with Kroger or any other supermarket chain, price is “very, very important.”¹¹ Louis Dreyfus also claimed 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.¹²

¹⁰ Conference transcript, p. 189 (Freeman).

¹¹ Ibid. ***.

¹² Conference transcript, pp. 189-190 (Freeman).

Citrosuco NA indicated that making a sale becomes a matter of price with similar kinds of certain orange juice.¹³ However, 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.¹⁴ Citrosuco NA indicated that major brands of NFCOJ such as Tropicana, Minute Maid, and Florida's Natural each has their own unique quality that they sell to the consumer and these companies noted that they have very specific requirements.¹⁵

Comparisons of Domestic Products and Subject Imports

As indicated in table II-5, five of seven extractor/processors, all three importers, and four of five extractor/processor/importers indicated that U.S.-produced FCOJM and imports of FCOJM from Brazil are either "frequently" or "sometimes" used interchangeably. The other remaining responding extractor/processors or extractor/processor/importers indicated that U.S.-produced FCOJM and imports of FCOJM from Brazil are "always" used interchangeably. Likewise, three of five responding extractor/processors, both responding importers and all three responding extractor/processor/importers reported that U.S.-produced and imports of NFCOJ from Brazil are either "frequently" or "sometimes" used interchangeably. The other remaining extractor/processors indicated that U.S.-produced NFCOJ and imports of NFCOJ from Brazil are "always" used interchangeably. As indicated in table II-6, 11 of 18 responding purchasers indicated that U.S.-produced certain orange juice and imports of certain orange juice from Brazil are at least "frequently" used interchangeably.

As indicated in table II-7, all seven responding extractor/processors reported that differences other than price between U.S.-produced FCOJM and imports of FCOJM from Brazil are at most "frequently" a significant factor in their firm's sales of FCOJM. Two of five responding extractor/processor/importers reported that U.S.-produced FCOJM and imports of FCOJM from Brazil are "always" a significant factor in their firm's sales of FCOJM, while two others indicated that they are "never" a significant factor. Both responding importers, and one of five responding extractor/processor/importers reported that differences other than price between U.S.-produced FCOJM and imports of FCOJM from Brazil are "sometimes" a significant factor in their firm's sales of FCOJM. All responding extractor/processors and importers indicated that differences other than price between U.S.-produced NFCOJ and imports of NFCOJ from Brazil are at most "frequently" a significant factor in their firm's sales of NFCOJ.

As seen in table II-8, all responding purchasers reported that U.S.-produced certain orange juice and Brazilian imports of certain orange juice comparable in terms of USDA grade, viscosity, discounts offered, minimum quantity requirements, and quality meeting industry standards. At least one-half of responding purchasers reported that U.S.-produced and Brazilian imports were comparable for all factors.

Comparisons of Domestic Products and Nonsubject Imports

As indicated in table II-5, five of seven extractor/processors, both importers, and four of five extractor/processor/importers indicated that U.S.-produced FCOJM and imports of FCOJM from nonsubject countries are either "frequently" or "sometimes" used interchangeably. The other remaining responding extractor/processors and the remaining responding extractor/processor/importer indicated that

¹³ Conference transcript, p. 190, (Emmanuel).

¹⁴ Conference transcript, pp. 190-191, (Emmanuel).

¹⁵ Conference transcript, p. 192, (Kalik).

Table II-5

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

Table II-6

Certain orange juice: U.S. purchasers' perceived degree of interchangeability of product produced in the United States and in other countries

Country pair	Number of U.S. purchasers reporting			
	A	F	S	N
U.S. vs. Brazil ¹	3	8	2	5
U.S. vs. other ²	3	4	2	6
Brazil vs. other ³	3	4	1	6
Note.—A=always; F=frequently; S=sometimes; N=never.				
¹ Does not include a response of *** of "frequently" for FCOJM and "never" for NFCOJ.				
² Does not include a response of *** of "frequently, never" for FCOJM.				
³ Includes response of *** of "frequently" for FCOJM.				
Source: Compiled from data submitted in response to Commission questionnaires.				

Table II-7

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 reporting				Number of U.S. importers reporting				Number of U.S firms that are extractor/processor/importers			
	A	F	S	N	A	F	S	N	A	F	S	N
FCOJM												
U.S. vs. Brazil	0	2	3	2	0	0	2	0	2	0	1	2
U.S. vs. other	0	2	2	2	1	0	1	0	2	0	1	2
Brazil vs. other	0	2	0	2	0	0	1	0	2	0	1	2
NFCOJ												
U.S. vs. Brazil	0	1	3	1	0	0	1	0	0	1	1	1
U.S. vs. other	0	0	1	2	0	0	0	0	0	1	1	1
Brazil vs. other	0	0	0	1	0	0	0	0	0	1	1	1
Note.-A=always; F=frequently; S=sometimes; N=never.												
Source: Compiled from data submitted in response to Commission questionnaires.												

Table II-8
Certain orange juice: Comparisons between U.S.-produced and subject Brazilian certain orange juice as reported by U.S. purchasers

Factor	Number of firms reporting		
	U.S. superior	Comparable	U.S. inferior
USDA grade	0	15	0
Viscosity	0	15	0
Discounts offered	0	14	0
Minimum quantity requirements	0	14	0
Packaging	0	13	1
Product consistency	0	13	1
Product range	0	12	1
Technical support/service	0	12	1
Quality meets industry standards	0	11	0
Quality exceeds industry standards	0	11	1
Reliability of supply	0	11	1
Lowest price ¹	1	11	3
Availability	2	11	2
Delivery terms	2	10	2
Delivery time	4	8	2
U.S. transportation costs	5	8	2
¹ A rating of superior means that the price is generally lower. For example, if a firm reports “U.S. superior,” this means that it rates the U.S. price generally lower than the Brazilian price. Source: Compiled from data submitted in response to Commission questionnaires.			

U.S.-produced FCOJM and imports of FCOJM from nonsubject countries are “always” used interchangeably. Likewise, three of five responding extractor/processors, the only responding importer, and all three responding extractor/processor/importers reported that U.S.-produced NFCOJ and imports of NFCOJ from nonsubject countries are either “frequently” or “sometimes” used interchangeably. The other remaining responding extractor/processors indicated that U.S.-produced NFCOJ and imports of NFCOJ from nonsubject countries are “always” used interchangeably. As indicated in table II-6, 12 of 15 responding purchasers indicated that U.S.-produced certain orange juice and imports of certain orange juice from Brazil are at most “frequently” used interchangeably.

As indicated in table II-7, all six responding extractor/processors reported that differences other than price between U.S.-produced FCOJM and imports of FCOJM from nonsubject countries are at most “frequently” a significant factor in their firm’s sales of FCOJM. Two of five responding extractor/processor/importers and one of two importers reported that U.S.-produced FCOJM and imports of FCOJM from nonsubject countries are “always” a significant factor in their firm’s sales of FCOJM, while two other extractor/processor/importers indicated that they are “never” a significant factor. The remaining responding importer, and one of five responding extractor/processor/importers reported that

differences other than price between U.S.-produced FCOJM and imports of FCOJM from nonsubject countries are “sometimes” a significant factor in their firm’s sales of FCOJM. All responding extractor/processors and extractor/processor/importers reported that differences other than price between U.S.-produced NFCOJ and imports of NFCOJ from nonsubject countries are at most “frequently” a significant factor in their firm’s sales of NFCOJ.

Comparisons of Subject Imports and Nonsubject Imports

As indicated in table II-5, two of four extractor/processors, both importers, and four of five firms that are extractor/processor/importers indicated that imports of FCOJM from Brazil and imports of FCOJM from nonsubject countries are either “frequently” or “sometimes” used interchangeably. The other two remaining responding extractor/processors and the remaining extractor/processor/importers indicated that imports of FCOJM from Brazil and imports of FCOJM from nonsubject countries are “always” used interchangeably. Likewise, all three responding extractor/processor/importers reported that imports of NFCOJ from Brazil and imports of NFCOJ from nonsubject countries are either “frequently” or “sometimes” used interchangeably. The two responding firms that are only extractor/processors indicated that imports from Brazil and imports of NFCOJ from nonsubject countries are “always” used interchangeably. As indicated in table II-6, 11 of 14 responding purchasers indicated that imports of certain orange juice from Brazil and imports of certain orange juice from nonsubject countries are at most “frequently” used interchangeably.

As indicated in table II-7, all four responding extractor/processors reported that differences other than price between imports of FCOJM from Brazil and imports of FCOJM from nonsubject countries are at most “frequently” a significant factor in their firm’s sales of FCOJM. Two of five responding extractor/processor/importers reported that imports of FCOJM from Brazil and imports of FCOJM from nonsubject countries are “always” a significant factor in their firm’s sales of FCOJM, while two others indicated that they are “never” a significant factor. The only responding importer, and one of five responding extractor/processor/importers reported that differences other than price between imports of FCOJM from Brazil and imports of FCOJM from nonsubject countries are “sometimes” a significant factor in their firm’s sales of FCOJM. All responding extractor/processors and extractor/processor/importers reported that differences other than price between imports of NFCOJ from Brazil and imports of NFCOJ from nonsubject countries are at most “frequently” a significant factor in their firm’s sales of NFCOJ.

ELASTICITY ESTIMATES

This section discusses the elasticity estimates. Parties were encouraged to comment on these estimates and were asked to do so as an attachment to their prehearing brief. Comments made by parties are addressed as appropriate.

U.S. Supply Elasticity

The domestic supply elasticity for certain orange juice measures the sensitivity of the quantity supplied by U.S. producers to changes in the U.S. market price of certain orange juice. The elasticity of domestic supply depends on several factors including the level of excess capacity, the ease with which producers can alter capacity, producers’ ability to shift to production of other products, the existence of inventories, and the availability of alternate markets for U.S.-produced certain orange juice. Petitioners disagreed with the prehearing staff report price elasticity of U.S. supply estimate of 2 to 4, indicating that

the supply is inelastic largely because supply of U.S. oranges is inelastic.¹⁶ While this is true, supply can respond to changes in price due to the high level of inventories. Therefore the U.S. industry is likely to be able to somewhat increase or decrease shipments to the U.S. market; an estimate in the range of 2 to 4 is suggested for certain orange juice.

U.S. Demand Elasticity

The U.S. demand elasticity for certain orange juice measures the sensitivity of the overall quantity demanded to a change in the U.S. market price of certain orange juice. This estimate depends on factors discussed earlier such as the existence, availability, and commercial viability of substitute products, as well as the component share of certain orange juice in the production of any downstream products. Petitioners indicate that they agree with the prehearing staff report that the price elasticity of demand for orange juice is inelastic.¹⁷ Based on the available information, the aggregate demand for certain orange juice is likely to be in a range of -0.25 to -0.50.

Substitution Elasticity

The elasticity of substitution depends upon the extent of product differentiation between the domestic and imported products.¹⁸ Product differentiation, in turn, depends upon such factors as quality and conditions of sale. No parties directly commented on the prehearing staff report substitution elasticity estimate.¹⁹ Based on available information, the elasticity of substitution between domestic and subject certain orange juice is likely to be in the range of 3 to 5.

¹⁶ Petitioners' prehearing brief, pp. 47-49.

¹⁷ Petitioners' prehearing brief, p. 48.

¹⁸ The substitution elasticity measures the responsiveness of the relative U.S. consumption levels of the subject imports and the domestic like products to changes in their relative prices. This reflects how easily purchasers switch from the U.S. product to the subject products (or vice versa) when prices change.

¹⁹ However, respondents Cutrale and Louis Dreyfus indicated that FCOJ from Florida and Sao Paulo are homogenous in their prehearing brief, but indicate that Brazilian product is often lower quality than U.S.-produced orange juice in their posthearing brief. Respondents Cutrale and Louis Dreyfus's prehearing brief, exhibit 2, p. 18 and Respondents Cedrela and Louis Dreyfus's posthearing brief, exh. 1, response to Commissioner's questions, p. 1.

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 36 U.S. growers and 12 U.S. extractor/processors.¹ These firms account for approximately 12 percent of U.S. production of oranges, and more than 90 percent of U.S. production of certain orange juice during the crop year 2004/05. Summaries of U.S. 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,² whereas California oranges are largely grown for fresh consumption with only a small amount used for processing.^{3 4}

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 grower questionnaires to a random sample of approximately 400 firms identified by the petitioners as domestic growers of juice oranges.⁵ Forty 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).⁶ Table III-1 presents a list of responding growers of oranges in Florida.

Responding growers reported the following effects from recent events.

* * * * *

Many processors own groves, or have contractual relationships with the growers and share the risk.⁷ Oranges are typically shipped through the cash market,⁸ cooperatives,⁹ and full and partial

¹ In addition, the Commission received an extractor/processor questionnaire from ***.

² Florida grows mostly Hamlin (early season) and Valencia (late-season) oranges. Over 95 percent of Florida's oranges are processed into juice.

³ California grows mostly navel and mandarin oranges.

⁴ Petition, pp. 3-4.

⁵ The random sampling was generated from an electronic listing of the 11,000 members of the FCM identified in the petition, exhibit 21.

⁶ Approximately 77 of the questionnaires were returned with notes that indicated the grove had been sold and/or redeveloped, the owner was deceased, or the individual never grew oranges.

⁷ Southern Gardens and A. Duda own groves, and Citrus World is a coop. Hearing transcript, p. 155 (McGrath).

⁸ In the cash market growers negotiate with the processors throughout the season. The price the growers get is based on the futures market prices. The price in the cash market is very dependent on the futures market. Hearing transcript, p. 114 (McKenna).

⁹ 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 juice, 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.

Table III-1

Certain orange juice: U.S. growers, locations, acres harvested, and quantity of harvest, by firms, 2004/05

Firm	Position	Production location(s)	Harvest 2004/05		
			Acres harvested	Yield (boxes per acre)	Quantity (1,000 90-pound boxes)
A. Duda (Citrus Belle)	Support	Florida	***	***	***
Alico	Support	Florida	***	***	***
Ben Hill Griffin	Support	Florida	***	***	***
Bliss Citrus	Support	Florida	***	***	***
BTS	Support	Florida	***	***	***
Cain Groves	(¹)	Florida	***	***	***
Cedar Haven	Support	Florida	***	***	***
Clonts Groves	Support	Florida	***	***	***
Davis Enterprise	Support	Florida	***	***	***
Evans Properties	Support	Florida	***	***	***
E.L. Farnsworth	***	Florida	***	***	***
Flying V	Support	Florida	***	***	***
GBS Groves	Support	Florida	***	***	***
Graves Brothers	Support	Florida	***	***	***
Hartwell Groves	Support	Florida	***	***	***
H&S Groves	Support	Florida	***	***	***
Hunt Brothers	Support	Florida	***	***	***
Jack Melton Family	Support	Florida	***	***	***
John Barnett	Support	Florida	***	***	***
K-Bob	Support	Florida	***	***	***
Lake Pickett Partnership	Support	Florida	***	***	***
Lamb Revocable Trust	Support	Florida	***	***	***
Lykes Brothers	Support	Florida	***	***	***
Martin Mekenna	Support	Florida	***	***	***
Orange & Sons	Support	Florida	***	***	***
Pierie Grove	Support	Florida	***	***	***
P.H. Freeman & Sons	***	Florida	***	***	***
Premier Citrus	Support	Florida	***	***	***
Robert Barben	Support	Florida	***	***	***
Roper ²	Support	Florida	***	***	***
Sliverman Groves	Support	Florida	***	***	***
Smoak Groves	Support	Florida	***	***	***
Sorrells Groups	Support	Florida	***	***	***
Southern Gardens	Support	Florida	***	***	***
Story Citrus/Groves	Support	Florida	***	***	***

Table continued on next page.

Table III-1--Continued

Certain orange juice: U.S. growers, locations, acres harvested, and quantity of harvest, by firms, 2004/05

Firm	Position	Production location(s)	Harvest 2004/05		
			Acres harvested	Yield (boxes per acre)	Quantity (1,000 90-pound boxes)
Sun Ag	Support	Florida	***	***	***
Travis Wise	Support	Florida	***	***	***
Uncle Matt's ²	Support	Florida	***	***	***
Whisenant Farms	***	Florida	***	***	***
William Parshall	Support	Florida	***	***	***
Total (40)			115,058	231	26,622
¹ Did not provide. ² Roper and Uncle Matt's grow organic oranges. Source: Compiled from data submitted in response to the Commission's questionnaires.					

participation plans.¹⁰ U.S. processors accounting for 80 percent of U.S. production during 2004/05 provided information regarding shares of production from U.S. fresh oranges by purchase type as follows:

Purchase type	Share of 2004/05 production from U.S. fresh oranges (percent)
Cash	19.1
Cooperative/own groves	***
Full participation	***
Partial participation	70.4
Total	100.0

¹⁰ Under a "full" participation plan the grower agrees to deliver all his fruit to a cooperative or corporate processor and his return is tied to the profitability of the processing plant. There is a minimum amount due to the grower based on the fiscal year results of the processing plant. At the time of delivery the grower is paid approximately 80 percent of the current spot market price. The following spring (usually March) the grower is paid the balance of the amount due. There is no price floor, and the grower's final return is determined by an agreed-upon formula based on the final selling price of the juice. Hearing transcript, p. 116 (Story) and petitioners' revised questionnaire responses, January 26, 2006.

Under a "minimum price/rise" partial participation plan, the growers are paid a minimum "floor-price" for their fruit at the time of delivery. The "rise" is tied to the participation price, which is determined based on the financial profitability of the plant. In the event the participation price exceeds the floor price for the given variety, the grower is paid the difference between the floor price and the participation price. Petitioners' revised questionnaire responses, January 26, 2006.

Under a "basis futures index pricing" agreement, oranges are provided pursuant to a contract whereby a grower receives a price for its fruit based on the FCOJ futures price, i.e., plus or minus basis futures. Pricing could also be tied to some other market index for bulk FCOJ price. Petitioners' revised questionnaire responses, January 26, 2006.

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 8.2 percent between 2001/02 and 2004/05. Total oranges produced fluctuated during the period of investigation and were 25 percent less in 2004/05 compared to 2001/02.¹¹ Oranges used for processing decreased in 2002/03, increased in 2003/04, and decreased in 2004/05 for an overall decrease of 32 percent. Table III-3 presents the utilization of Florida round oranges from 2001/02 to 2004/05. In 2001/02, approximately 57.5 percent of Florida round oranges were used to produce FCOJM and 37.3 percent were used to produce NFC. In 2004/05, the shares were reversed with approximately 34.9 percent of Florida round oranges used to produce FOCJM and 59.2 percent used to produce NFCOJ, for a total of 94.1 percent of Florida oranges processed into orange juice. Figure III-1 presents U.S. bearing acreage and yield since crop year 1989/90. Petitioners reported that individual orange growers are not dedicated solely to growing oranges for FCOJM versus NFCOJ, and growers generally do not know which product their oranges will be processed into.¹²

There are a variety of factors that affect the yield, including: age of the trees,¹³ 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 by hurricanes in 2004/05. Hurricane Charley hit in August 13, 2004; Frances made landfall on September 5, 2004; Jeanne made landfall on September 26, 2004; and Wilma made landfall on October 24, 2005. These 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.^{14 15} Table III-4 presents data on citrus production by variety and state during 2001/02-2004/05. In 2005/06, Florida production of the late-season maturing Valencias is projected to be greater than production of early, mid-season, and navel oranges. The Florida Department of Citrus projects that this trend will continue.¹⁶ The Florida Citrus Processors Association (“FCPA”) reported that Valencia oranges accounted for 50 percent of the oranges allocated to NFC compared to 40 percent for FCOJ.¹⁷

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. There are approximately 20 Florida citrus juice extractors¹⁸ The Commission sent extractor/processor questionnaires to 73 firms.

¹¹ The harvest is the most labor-intensive part of growing oranges. A few of the larger growers use mechanical harvesters, but generally the harvest is done by hand by seasonal hired laborers. Petitioners’ prehearing brief, p. 58.

¹² Petitioners’ prehearing brief, p. 35, and comments from growers presented in appendix D.

¹³ Orange trees typically bear fruit between 4 and 12 years after planting.

¹⁴ Petition, p. 83.

¹⁵ U.S. orange growers have received Federal Disaster Assistance to partly compensate them for their losses resulting from the hurricanes. Petitioners’ prehearing brief, p. 66

¹⁶ Hearing transcript, p. 87 (Behr).

¹⁷ Petitioners’ prehearing brief, p. 7.

¹⁸ Staff telephone interview with the Florida Citrus Processors Association, January 25, 2006.

Table III-2

Oranges: Bearing acreage, production, yield, and shares of production by utilization, by state, crop years 2001/02 to 2004/05

Item	Crop year (October-September)			
	2001/02	2002/03	2003/04	2004/05
Bearing acreage (1,000 acres)				
Florida	586.9	587.6	564.8	541.8
California	195.0	189.5	182.0	176.0
Texas	9.3	8.8	8.8	8.8
Arizona	6.4	5.8	5.8	5.5
Total U.S.	797.6	791.7	761.4	732.1
Total oranges produced (million boxes)				
Florida	230.0	203.0	242.0	149.6
California	51.5	62.0	50.5	61.0
Texas	1.7	1.6	1.7	1.8
Arizona	0.5	0.5	0.5	0.4
Total U.S.	283.8	267.0	294.6	212.8
Fresh oranges (million boxes)				
Florida	9.4	9.7	9.9	7.4
California	44.3	49.8	44.5	48.4
Texas	1.4	1.1	1.2	1.2
Arizona	0.5	0.4	0.4	0.3
Total fresh	55.5	61.0	55.9	57.3
Processed oranges (million boxes)				
Florida	220.6	193.3	232.1	142.2
California	7.3	12.2	6.0	12.6
Texas	0.3	0.4	0.5	0.5
Arizona	0.1	0.1	0.1	0.1
Total processed	228.3	206.0	238.7	155.5
Yield (boxes per acre)				
Florida	392	345	428	276
California	264	327	277	347
Texas	187	178	188	201
Arizona	81	81	81	78
Average U.S.	356	337	387	291

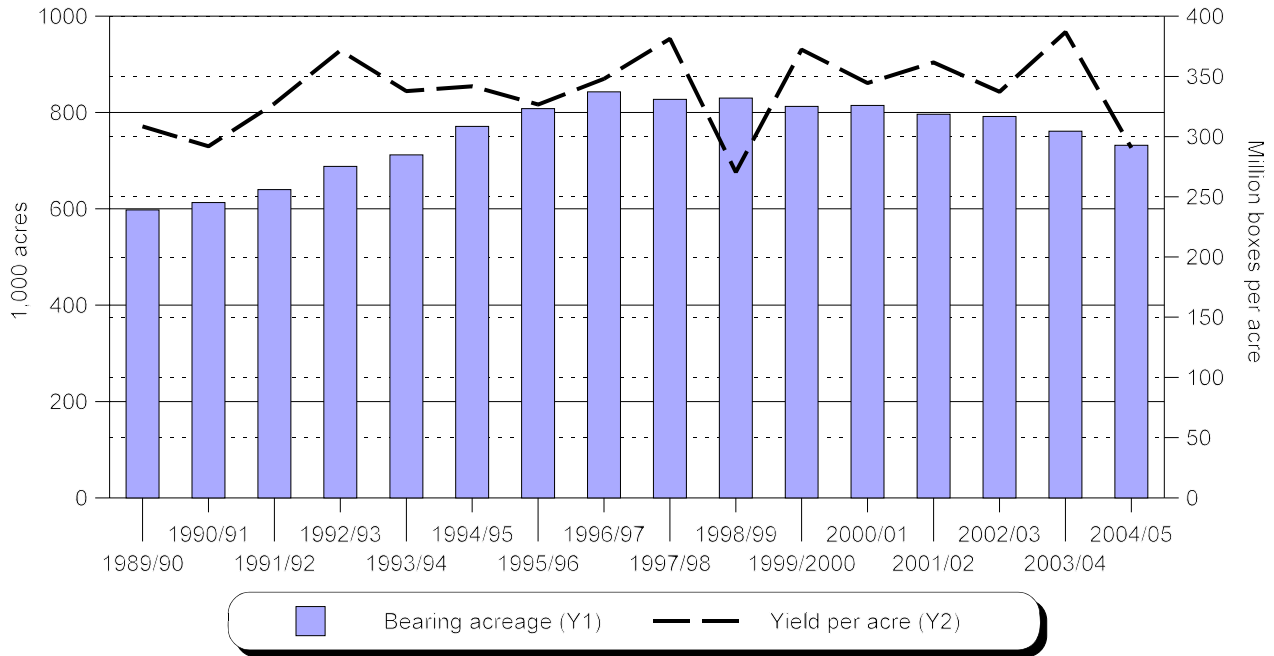
Table continued on next page.

Table III-2--Continued

Oranges: Bearing acreage, production, yield, and shares of production by utilization, by state, crop years 2001/02 to 2004/05

Item	Crop year (October-September)			
	2001/02	2002/03	2003/04	2004/05
Share of total oranges produced (percent)				
Fresh:				
Florida	4.1	4.8	4.1	4.9
California	85.9	80.3	88.1	79.3
Texas	80.1	71.8	70.8	69.6
Arizona	88.3	84.9	78.3	77.4
Average fresh	19.6	22.9	19.0	26.9
Processed:				
Florida	95.9	95.2	95.9	95.1
California	14.1	19.7	11.9	20.7
Texas	19.9	28.2	29.2	30.4
Arizona	11.7	15.1	21.7	22.6
Average processed	80.4	77.1	81.0	73.1
Total:				
Florida	81.1	76.0	82.1	70.3
California	18.1	23.2	17.1	28.7
Texas	0.6	0.6	0.6	0.8
Arizona	0.2	0.2	0.2	0.2
Total U.S.	100.0	100.0	100.0	100.0
Note.—Because of rounding, figures may not add to the totals shown.				
Source: <i>Citrus Fruits</i> , 2004 and 2005 summaries, USDA, National Agricultural Statistics Service.				

Figure III-1
Oranges: U.S. bearing acreage and yield, crop years 1989/90-2004/05



Source: USDA, NASS, Citrus Fruits Summaries, various issues.

Table III-3
Round oranges: Utilization of Florida round oranges, crop years 2001/02 to 2004/05

Item	Crop year			
	2001/02	2002/03	2003/04	2004/05
Quantity (1,000 90-pound boxes)				
Fresh	6,900	6,300	6,200	4,900
FCOJM	132,200	98,700	137,000	52,200
NFCOJ	85,900	92,500	93,400	88,500
Non-certified	2,500	3,400	3,700	2,500
Other ¹	2,500	2,100	1,700	1,500
Total	230,000	203,000	242,000	149,600
Share (percent)				
Fresh	3.0	3.1	2.6	3.3
FCOJM	57.5	48.6	56.6	34.9
NFCOJ	37.3	45.6	38.6	59.2
Non-certified	1.1	1.7	1.5	1.7
Other ¹	1.1	1.0	0.7	1.0
Total	100.0	100.0	100.0	100.0
¹ Includes CSSOJ, blends, and utilization by non-FCPA members.				
Source: "Florida Citrus Outlook 2005-06 Season", Florida Department of Citrus, p. 17, December 21, 2005.				

Table III-4

Oranges: Production, by varieties and states, crop years 2001/03-2003/04, and 2004/05

Item	Crop year				
	2001/02	2002/03	2003/04	2004/05	Forecast 2005/06
Quantity (1,000 90-pound boxes)					
Early, midseason, and navel oranges:					
Florida	128,000	112,000	126,000	79,100	93,000
California	32,000	42,000	38,000	43,000	42,000
Texas	1,530	1,350	1,420	1,500	1,300
Arizona	270	200	300	240	270
Total	161,800	155,550	165,720	123,840	136,570
Valencia oranges:					
Florida	102,000	91,000	116,000	70,500	97,000
California	19,500	20,000	14,000	18,000	13,000
Texas	210	220	230	270	230
Arizona	250	270	170	190	200
Total	121,960	111,490	130,400	88,960	110,430
All oranges:					
Florida	230,000	203,000	242,000	149,600	190,000
California	51,500	62,000	52,000	61,000	55,000
Texas	1,740	1,570	1,650	1,770	1,530
Arizona	520	470	470	430	470
Total	283,760	267,040	296,120	212,800	247,000
Shares (percent)					
Early, midseason, and navel oranges:					
Florida	55.7	55.2	52.1	52.9	48.9
California	62.1	67.7	73.1	70.5	76.4
Texas	87.9	86.0	86.1	84.7	85.0
Arizona	51.9	42.6	63.8	55.8	57.4
Total	57.0	58.2	56.0	58.2	55.3
Valencia oranges:					
Florida	44.3	44.8	47.9	47.1	51.1
California	37.9	32.3	26.9	29.5	23.6
Texas	12.1	14.0	13.9	15.3	15.0
Arizona	48.1	57.4	36.2	44.2	42.6
Total	43.0	41.8	44.0	41.8	44.7
Source: <i>Citrus Forecasts</i> , NASS, October 2004 and October 2005, and <i>Fruit and Tree Nuts Outlook</i> , ERS, USDA, November 20, 2005.					

Petitioners reported that there are 14 major processors, of which six are also growers.¹⁹ Twelve firms provided responses to the Commission's processors' questionnaire and they accounted for more than 91 percent of U.S. production of certain orange juice in crop year 2004/05.²⁰ *** is the largest producer of FCOJM and *** is the largest producer of NFCOJ.²¹ 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, products produced, toll agreements since January 1, 2001, and share of reported crop year 2004/05 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.²²

Several U.S. processors have gone out of business prior to or during the period of investigation. Citrus Service closed its plant in 2000.²⁴ Golden Gem closed its processing facilities in 2001. Pasco Beverage closed its FCOJM processing plant in May 2004. Holly Hill Fruit Products shut down its FCOJM processing business for the 2004/05 season. Lykes-Pasco has gone completely out of business.²⁵

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, rose by 2.7 percent from 2002/03 to 2003/04, and was stable from 2003/04 to 2004/05. U.S. extractor/processors' production of orange juice fell 12.8 percent from 2001/02 to 2002/03, rose by 19.5 percent from 2002/03 to 2003/04, and then fell by 34.1 percent in 2004/05. Capacity utilization fell by 10.9 percentage points from 2001/02 to 2002/03, rose by 12.2 percentage points in 2003/04, and then fell by 29.6 percentage points in 2004/05. U.S. extractor/processors 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, numbers of 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 A. Duda, Southern Gardens, Citrus World, Holly Hill, Sunkist, and TCX, either directly own groves or are part of a cooperative. Petition, p. 6.

²⁰ Based on a comparison of questionnaire and USDA data.

²¹ ***.

²² Cutrale USA 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 NA 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 USA's processing plants in Florida have contractual relationships with fixed prices with customers such as Minute Maid, Johanna Farms, and Dean Foods. Citrusuco NA's Florida processing plants have contracts with Tropicana and Lykes. Petitioners' postconference brief, p. 28, and questionnaire responses.

²³ Citrusuco NA's investments total over \$100 million, Cutrale USA's over \$200 million, and Louis Dreyfus' over \$100 million. Respondents Cutrale/Louis Dreyfus' prehearing brief, p. 17.

²⁴ Citrus Service processed organic oranges. Petition, p. 94.

²⁵ Petitioners' prehearing brief, p. 65.

Table III-5

Certain orange juice: U.S. extractor/processors, positions on the petition, U.S. production locations, products produced, toll agreements, and reported 2004/05 production and shares

Firm	Position on petition	Production location(s)	Toll agreements since January 1, 2001	U.S. production (1,000 pounds solids)			Shares of reported 2004/05 production (percent)		
				FCOJM	NFCOJ	Total	FCOJM	NFCOJ	Total
A. Duda	Supports	Florida	***	***	***	***	***	***	***
Cargill	***	Florida	***	***	***	***	***	***	***
Citrosuco NA	Opposes	Florida	***	***	***	***	***	***	***
Citrus World	Supports	California, Florida	***	***	***	***	***	***	***
Cutrale USA	Opposes	Florida	***	***	***	***	***	***	***
Holly Hill	Supports	Florida	***	***	***	***	***	***	***
Louis Dreyfus	Opposes	Florida	***	***	***	***	***	***	***
Peace River	Opposes	Florida	***	***	***	***	***	***	***
Silver Spring	***	Florida	***	***	***	***	***	***	***
Southern Gardens	Supports	Florida	***	***	***	***	***	***	***
Sunkist	Supports	California	***	***	***	***	***	***	***
Tropicana	Opposes	Florida	***	***	***	***	***	***	***
Total				421,083	544,323	965,406	100.0	100.0	100.0

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

Most extractor/processors in the industry blend their own crushed orange juice with purchases of U.S. orange juice and/or imports of orange juice. Blending is done to meet customer specifications. Respondents state that imports from Brazil are needed for blending for U.S. juice to meet color and viscosity requirements.²⁶ Table III-7 presents the U.S. processors' blended production of orange juice.

Table III-8 presents reported changes in extractor/processors' operations since January 1, 2001. *** reported changes in their firm's operations. Table III-9 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. Seven 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. Table III-10 presents the extractor/processors' cost of sales of FCOJM and NFCOJ in their most recent fiscal year.

²⁶ Cutrale estimates that 81 percent of average annual imports from Brazil during the period of investigation were used for blending purposes. Respondents Cutrale/Louis Dreyfus' prehearing brief, p. 7, fn. 13.

Table III-6
Certain orange juice: Reported U.S. production capacity, production, and capacity utilization, crop years
2001/02-2004/05

Item	Crop year			
	2001/02	2002/03	2003/04	2004/05
FCOJM:				
Capacity (1,000 pounds solids)	1,031,378	970,967	1,063,520	972,247
Production (1,000 pounds solids):				
Non-toll production	***	***	***	***
Toll production	***	***	***	***
Total production	938,152	669,838	934,019	421,083
Capacity utilization (percent)	91.0	69.0	87.8	43.3
NFCOJ:				
Capacity (1,000 pounds solids)	614,262	674,674	627,120	718,393
Production (1,000 pounds solids):				
Non-toll production	***	***	***	***
Toll production	***	***	***	***
Total production	467,385	556,265	531,322	544,323
Capacity utilization (percent)	76.1	82.4	84.7	75.8
Total:				
Capacity (1,000 pounds solids)	1,645,640	1,645,641	1,690,640	1,690,640
Production (1,000 pounds solids):				
Non-toll production	***	***	***	***
Toll production	***	***	***	***
Total production	1,405,537	1,226,103	1,465,341	965,406
Capacity utilization (percent)	85.4	74.5	86.7	57.1
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: Reported U.S. blended production, crop years 2001/02-2004/05

<i>(Quantity in 1,000 pounds solids)</i>				
Item	Crop year			
	2001/02	2002/03	2003/04	2004/05
FCOJM production from:				
U.S. fresh oranges	938,152	669,838	934,019	421,083
Purchases of U.S. orange solids	***	***	***	***
Orange solids from Brazil	***	***	***	***
Other orange solids imports ²	***	***	***	***
Total production	1,196,241	853,674	1,140,199	771,845
NFCOJ production from:				
U.S. fresh oranges	467,385	556,265	531,322	544,323
Purchases of U.S. orange solids	***	***	***	***
Orange solids from Brazil	***	***	***	***
Other orange solids imports ²	***	***	***	***
Total production	531,812	652,857	596,370	653,459
Certain orange juice production from:				
U.S. fresh oranges	1,405,537	1,226,103	1,465,341	965,406
Purchases of U.S. orange solids	***	***	***	***
Orange solids from Brazil	***	***	***	***
Other orange solids imports ²	***	***	***	***
Total production	1,728,053	1,506,531	1,736,569	1,425,304
Note: Pounds solids per gallon SSE are 1.029.				
Source: Compiled from data submitted in response to Commission questionnaires.				

Table III-8

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

* * * * *

Table III-9

Certain orange juice: U.S. producers, other products produced on the same equipment and using the same production and related workers employed to produce certain orange juice, and shares of certain orange juice production on the same equipment and using the same workers, crop year 2004/05

* * * * *

Table III-10

Certain orange juice: U.S. producers' cost of sales, by type (most recent fiscal year)

Item	Value (1,000 dollars)		Share (percent)		Unit value	
	FCOJM	NFCOJ	FCOJM	NFCOJ	FCOJM	NFCOJ
Total raw materials cost	***	***	80.3	77.6	\$0.72	\$0.92
Processing (direct labor and other factory costs):						
Grading/sizing	***	***	1.0	2.2	0.01	0.03
Juice extraction	***	***	2.3	3.9	0.02	0.05
Finishing	***	***	1.3	0.1	0.01	(¹)
Evaporation/pasteurization	***	***	5.0	3.5	0.05	0.04
Storage	***	***	4.2	6.6	0.04	0.08
Packing	***	***	2.2	0.4	0.02	0.01
Transportation	***	***	0.3	0.2	(¹)	(¹)
Other	***	***	3.5	5.5	0.03	0.06
Total processing costs	***	***	19.7	22.4	0.18	0.26
Total costs	***	***	100.0	100.0	0.90	1.18
Total net sales quantity (1,000 pounds solids)	***	***				
¹ Less than \$0.005. Note: The above data are compiled from information provided by *** processors, accounting for more than half of U.S. production of certain orange juice during 2004/05 and include ***. Data submitted by *** were not utilized ***. *** did not respond to this section of the questionnaire. Source: Compiled from data submitted in response to Commission questionnaires.						

The data in table III-10 are consistent with the financial data contained in Part VI of this report as shown in the tabulation below:

Item	Data in table III-10	Data in tables VI-2 and IV-3
	Unit value (dollars per pound solids equivalent), except as noted	
FCOJM:		
Raw materials cost	\$0.720	\$0.677
Processing cost	\$0.176	\$0.184
Total cost	\$0.897	\$0.861
Raw materials as percent of total cost	80.3	78.6
Processing cost as percent of total cost	19.7	21.4
NFCOJ:		
Raw materials cost	\$0.915	\$0.849
Processing cost	\$0.264	\$0.247
Total cost	\$1.179	\$1.096
Raw materials as percent of total cost	77.6	77.5
Processing cost as percent of total cost	22.4	22.5

Both sets of data indicate the same approximate differences between unit costs for FCOJM and NFCOJ: \$0.172 to \$0.195 for raw materials (oranges), \$0.063 to \$0.088 for processing costs, and \$0.235 to \$0.282 for total costs. The relative percentage that each cost accounts for in both sets of data is closer still.²⁷

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

Data on domestic producers' shipments of certain orange juice are presented in table III-11. Commercial shipments accounted for *** percent of U.S. shipments of certain orange juice in 2004/05. The quantity of U.S. shipments fell by 10.8 percent from 2001/02 to 2002/03, then rose by 12.9 percent in 2003/04, then fell by 22.3 percent in 2004/05. The value of U.S. shipments fell 6.3 percent from 2001/02 to 2002/03, rose 5.9 percent in 2003/04, and then fell 16.5 percent in 2004/05. The unit value of U.S. shipments increased 4.8 percent from 2001/02 to 2002/03, fell 8.2 percent in 2003/04, then rose 6.1 percent in 2004/05. Four processors reported internal consumption of orange juice for further processing into retail packaging.²⁸ Internal consumption of FCOJM ranged from *** percent to *** percent of U.S.

²⁷ With respect to the financial data, processing cost is the sum of direct labor and other factory costs.

²⁸ ***.

Table III-11

Certain orange juice: U.S. producers' shipments,¹ by type, crop years 2001/02-2004/05

Item	Crop year			
	2001/02	2002/03	2003/04	2004/05
Quantity (1,000 pounds solids)				
FCOJM:				
Commercial shipments	***	***	***	***
Internal consumption	***	***	***	***
U.S. shipments	839,745	630,418	801,337	467,563
Export shipments	97,103	37,855	61,217	47,450
Total shipments	936,848	668,273	862,554	515,013
NFCOJ:				
Commercial shipments	***	***	***	***
Internal consumption	***	***	***	***
U.S. shipments	498,930	564,071	547,462	581,080
Export shipments	21,000	12,903	13,090	14,016
Total shipments	519,930	576,974	560,552	595,096
Total:				
Commercial shipments	***	***	***	***
Internal consumption	***	***	***	***
U.S. shipments	1,338,675	1,194,489	1,348,799	1,048,643
Export shipments	118,103	50,758	74,307	61,466
Total shipments	1,456,778	1,245,247	1,423,106	1,110,109
Value (1,000 dollars)				
FCOJM:				
Commercial shipments	***	***	***	***
Internal consumption	***	***	***	***
U.S. shipments	703,732	535,179	635,313	388,057
Export shipments	104,911	39,999	54,939	37,926
Total shipments	808,643	575,178	690,252	425,983
NFCOJ:				
Commercial shipments	***	***	***	***
Internal consumption	***	***	***	***
U.S. shipments	627,684	712,316	685,774	715,259
Export shipments	27,212	17,673	16,212	18,672
Total shipments	654,896	729,989	701,986	733,931
Total:				
Commercial shipments	***	***	***	***
Internal consumption	***	***	***	***
U.S. shipments	1,331,416	1,247,495	1,321,088	1,103,316
Export shipments	132,123	57,672	71,151	56,598
Total shipments	1,463,539	1,305,167	1,392,239	1,159,914

Table continued on next page.

Table III-11--Continued

Certain orange juice: U.S. producers' shipments, by type, crop years 2001/02-2004/05

Item	Crop year			
	2001/02	2002/03	2003/04	2004/05
Unit value (per pound solids)				
FCOJM:				
Commercial shipments	\$***	\$***	\$***	\$***
Internal consumption	***	***	***	***
U.S. shipments	1.08	1.12	0.99	1.00
Export shipments	1.08	1.06	0.90	0.80
Total shipments	1.08	1.11	0.98	0.98
NFCOJ:				
Commercial shipments	***	***	***	***
Internal consumption	***	***	***	***
U.S. shipments	1.37	1.39	1.37	1.39
Export shipments	1.30	1.37	1.24	1.33
Total shipments	1.37	1.39	1.36	1.39
Total:				
Commercial shipments	***	***	***	***
Internal consumption	***	***	***	***
U.S. shipments	1.20	1.26	1.16	1.23
Export shipments	1.12	1.14	0.96	0.92
Total shipments	1.19	1.25	1.14	1.21
Share of quantity (percent)				
FCOJM:				
Commercial shipments	***	***	***	***
Internal consumption	***	***	***	***
U.S. shipments	89.6	94.3	92.9	90.8
Export shipments	10.4	5.7	7.1	9.2
Total shipments	100.0	100.0	100.0	100.0
NFCOJ:				
Commercial shipments	***	***	***	***
Internal consumption	***	***	***	***
U.S. shipments	96.0	97.8	97.7	97.6
Export shipments	4.0	2.2	2.3	2.4
Total shipments	100.0	100.0	100.0	100.0
Total:				
Commercial shipments	***	***	***	***
Internal consumption	***	***	***	***
U.S. shipments	91.9	95.9	94.8	94.5
Export shipments	8.1	4.1	5.2	5.5
Total shipments	100.0	100.0	100.0	100.0

Table continued on next page.

Table III-11--Continued

Certain orange juice: U.S. producers' shipments, by type, crop years 2001/02-2004/05

Item	Crop year			
	2001/02	2002/03	2003/04	2004/05
Share of value (percent)				
FCOJM:				
Commercial shipments	***	***	***	***
Internal consumption	***	***	***	***
U.S. shipments	87.0	93.0	92.0	91.1
Export shipments	13.0	7.0	8.0	8.9
Total shipments	100.0	100.0	100.0	100.0
NFCOJ:				
Commercial shipments	***	***	***	***
Internal consumption	***	***	***	***
U.S. shipments	95.8	97.6	97.7	97.5
Export shipments	4.2	2.4	2.3	2.5
Total shipments	100.0	100.0	100.0	100.0
Total:				
Commercial shipments	***	***	***	***
Internal consumption	***	***	***	***
U.S. shipments	91.0	95.6	94.9	95.1
Export shipments	9.0	4.4	5.1	4.9
Total shipments	100.0	100.0	100.0	100.0
<p>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. *** did not estimate their shipments of blended production.</p> <p>Note.—Because of rounding, figures may not add to the totals shown. Pounds solids per gallon SSE are 1.029.</p> <p>Source: Compiled from data submitted in response to Commission questionnaires.</p>				

processors' total shipments. Internal consumption of NFCOJ ranged from *** percent to *** percent of U.S. processors' total shipments.²⁹ Nine processors reported exports of certain orange juice; the data are presented in table III-12.^{30 31} Exports decreased 57.0 percent from 2001/02 to 2002/03, increased 46.4 percent in 2003/04, and then decreased 17.3 percent in 2004/05. The value of exports similarly decreased 56.3 percent from 2001/02 to 2002/03, increased 23.4 percent in 2003/04, and then decreased 20.5 percent in 2004/05.

²⁹ ***.

³⁰ The firms include ***.

³¹ The FCOJM export shipments were made to ***, and the NFCOJ export shipments were made to ***.

Table III-12

Certain orange juice: U.S. producers' export shipments, by type, crop years 2001/02-2004/05

* * * * *

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.³² Table III-13 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 eight producers, ***,³³ reported that they purchased imports of subject orange juice. 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 exports 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.³⁴

Table III-13

Certain orange juice: U.S. extractor/processors' imports and purchases, crop years 2001/02-2004/05

* * * * *

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.³⁵ Following the orange crop loss from the hurricanes, the inventory level fell in 2005 to a 25 week's supply.³⁶ Data on end-of-period inventories of certain orange juice are presented in table III-14. Inventories rose 3.8 percent from 2001/02 to 2002/03, rose 22.9 percent in 2003/04, and then fell 23.2 percent in 2004/05. Inventories as a share of total shipments rose 8.3 percentage points from 2001/02 to 2004/05. Table III-15 presents USDA data on U.S. inventories of certain orange juice.³⁷

³² Conference transcript, pp. 58-59 (Lucas) and 132 (Freeman).

³³ ***.

³⁴ Imports from Mexico, Belize, and Costa Rica cannot be used for this purpose because their juice enters free of duties. Respondents Cutrale/Louis Dreyfus' postconference brief, p. 4.

³⁵ Respondents Cutrale/Louis Dreyfus' postconference brief, p. 6, fn. 12.

³⁶ Petitioners' prehearing brief, p. 77.

³⁷ Table III-15 contains stocks of U.S.-produced orange juice blended with imports of certain orange juice, while table III-14 contains data on inventories of orange juice produced from U.S.-produced orange solids.

Table III-14

Certain orange juice: U.S. producers' end-of-period inventories, crop years 2001/02-2004/05

Item	Crop year			
	2001/02	2002/03	2003/04	2004/05
FCOJM:				
Inventories (1,000 pounds solids)	289,580	293,214	377,622	266,243
Ratio to production (percent)	30.9	43.8	40.4	63.4
Ratio to U.S. shipments (percent)	34.5	46.5	47.1	56.9
Ratio to total shipments (percent)	30.9	43.9	43.8	51.7
NFCOJ:				
Inventories (1,000 pounds solids)	134,161	146,598	162,762	148,938
Ratio to production (percent)	28.7	26.4	30.6	27.4
Ratio to U.S. shipments (percent)	26.9	26.0	29.7	25.6
Ratio to total shipments (percent)	25.8	25.4	29.0	25.0
Total:				
Inventories (1,000 pounds solids)	423,741	439,812	540,384	415,181
Ratio to production (percent)	30.1	35.9	36.9	43.0
Ratio to U.S. shipments (percent)	31.7	36.8	40.1	39.6
Ratio to total shipments (percent)	29.1	35.3	38.0	37.4
Note: Pounds solids per gallon SSE are 1.029.				
Source: Compiled from data submitted in response to Commission questionnaires.				

Table III-15

Certain orange juice: U.S. producers' carryover stocks, ratio to production, and period changes, crop years 2001/02-2004/05¹

Item	Crop year				Period changes (percent)			
	2001/02	2002/03	2003/04	2004/05	02-05	02-03	03-04	04-05
U.S. production (1,000 gallons SSE)	1,432,162	1,246,761	1,471,334	1,006,642	(29.7)	(12.9)	18.0	(31.6)
Beginning stocks (1,000 gallons SSE)	698,464	692,163	704,509	842,139	20.6	(0.9)	1.8	19.5
Ending stocks (1,000 gallons SSE)	692,163	704,509	842,139	590,000	(14.8)	1.8	19.5	(29.9)
Ratio of ending stocks to U.S. production (percent)	48.3	56.5	57.2	58.6	10.3	8.2	0.7	1.4
¹ Stocks contain U.S. production blended with imports of certain orange juice.								
Note: Metric tons converted to gallons SSE by a conversion factor of 1,405.88.								
Source: Foreign Agricultural Service, USDA, <i>PS&D Online</i> , November 2005.								

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-16.

Table III-16

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, crop years 2001/02-2004/05

Item	Crop year			
	2001/02	2002/03	2003/04	2004/05
FCOJM:				
PRWs (<i>number</i>)	1,980	1,698	1,982	1,448
Hours worked (<i>1,000</i>)	4,809	3,810	4,620	3,213
Wages paid (<i>\$1,000</i>)	57,763	44,698	54,650	40,895
Hourly wages	\$12.01	\$11.73	\$11.83	\$12.73
Productivity (<i>pounds solids per hour</i>)	177.7	159.8	188.8	118.6
Unit labor costs (<i>per pound solids</i>)	\$0.07	\$0.07	\$0.06	\$0.11
NFCOJ:				
PRWs (<i>number</i>)	1,465	1,747	1,560	1,592
Hours worked (<i>1,000</i>)	4,289	4,453	3,858	4,050
Wages paid (<i>\$1,000</i>)	60,737	73,010	68,073	72,590
Hourly wages	\$14.16	\$16.39	\$17.65	\$17.92
Productivity (<i>pounds solids per hour</i>)	112.9	122.1	143.2	128.1
Unit labor costs (<i>per pound solids</i>)	\$0.13	\$0.13	\$0.12	\$0.14
Total:				
PRWs (<i>number</i>)	3,445	3,445	3,542	3,040
Hours worked (<i>1,000</i>)	9,098	8,263	8,478	7,263
Wages paid (<i>\$1,000</i>)	118,500	117,708	122,723	113,485
Hourly wages	\$13.02	\$14.25	\$14.48	\$15.63
Productivity (<i>pounds solids per hour</i>)	147.1	139.5	168.0	123.9
Unit labor costs (<i>per pound solids</i>)	\$0.09	\$0.10	\$0.09	\$0.13
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 2004/05 was Cutrale USA. Only two firms reported imports of NFCOJ from Brazil: ***.³ A list of U.S. importers of certain orange juice, their shares of 2004/05 imports, the foreign producers they import from, and their customers are presented in table IV-1.

Table IV-1
Certain orange juice: U.S. importers, shares of 2004/05 imports from Brazil, Brazilian producers, and 2004 customers

* * * * *

U.S. IMPORTS

Import data are from official Commerce statistics. Commerce found that Coinbra is the successor-in-interest of Frutropic; therefore, all reported imports of certain orange juice from Brazil are subject imports.⁴ 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.⁵ In particular, Fischer/Citrosuco 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 that carry orange juice.⁶ U.S. imports of certain orange juice are presented in table IV-2.⁷

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 *** submitted a response to the importer questionnaire as a consignee or taking title to the product. To avoid double counting, its 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 Citrovita’s production of orange juice in Brazil is not subject product. Citrovita ***.

⁵ Petitioners’ postconference brief, p. 3.

⁶ 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 Fischer/Citrosuco’s new ships, Tropicana reportedly began putting pressure on Florida growers to renegotiate their contracts. Petition, p. 91.

⁷ Imports of FCOJM are from official Commerce statistics under the HTS statistical reporting number 2009.11.0060. Imports of NFCOJ are from official Commerce statistics under the HTS subheadings 2009.19.25 (for 2001) and 2009.12.25 (for 2002/05). Some FCOJM and NFCOJ may be imported under HTS subheadings 2009.12.45 and 2009.19.00 which are basket categories. Brazilian subject imports may have been imported under those basket categories; therefore, imports may be somewhat understated.

Table IV-2

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

Source	Crop year			
	2001/02	2002/03	2003/04	2004/05
Quantity (1,000 gallons SSE)				
FCOJM:				
Brazil	104,857	206,064	142,418	209,620
Other sources	73,140	58,708	62,603	117,209
Total	177,997	264,772	205,021	326,829
NFCOJ:				
Brazil	4,871	21,216	11,785	22,091
Other sources	2,419	881	1,564	3,223
Total	7,291	22,097	13,349	25,314
Total:				
Brazil	109,728	227,280	154,203	231,711
Other sources	75,559	59,589	64,167	120,432
Total	185,287	286,869	218,370	352,143
Landed, duty-paid value (1,000 dollars)				
FCOJM:				
Brazil	90,340	205,709	127,358	199,970
Other sources	99,732	74,759	51,097	104,020
Total	190,073	280,468	178,455	303,990
NFCOJ:				
Brazil	8,822	36,550	15,344	32,510
Other sources	3,370	1,734	2,551	5,172
Total	12,192	38,285	17,895	37,682
Total:				
Brazil	99,162	242,259	142,702	232,481
Other sources	103,102	76,494	53,648	109,191
Total	202,265	318,753	196,350	341,672

Table continued on next page.

Table IV-2--Continued

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

Source	Crop year			
	2001/02	2002/03	2003/04	2004/05
Unit value (per gallon)				
FCOJM:				
Brazil	\$0.86	\$1.00	\$0.89	\$0.95
Other sources	1.36	1.27	0.82	0.89
Average	1.07	1.06	0.87	0.93
NFCOJ:				
Brazil	1.81	1.72	1.30	1.47
Other sources	1.39	1.97	1.63	1.60
Average	1.67	1.73	1.34	1.49
Total:				
Brazil	0.90	1.07	0.93	1.00
Other sources	1.36	1.28	0.84	0.91
Average	1.09	1.11	0.90	0.97
Share of quantity (percent)				
FCOJM:				
Brazil	58.9	77.8	69.5	64.1
Other sources	41.1	22.2	30.5	35.9
Total	100.0	100.0	100.0	100.0
NFCOJ:				
Brazil	66.8	96.0	88.3	87.3
Other sources	33.2	4.0	11.7	12.7
Total	100.0	100.0	100.0	100.0
Total:				
Brazil	59.2	79.2	70.6	65.8
Other sources	40.8	20.8	29.4	34.2
Total	100.0	100.0	100.0	100.0

Table continued on next page.

Table IV-2--Continued

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

Source	Crop year			
	2001/02	2002/03	2003/04	2004/05
Share of value (percent)				
FCOJM:				
Brazil	47.5	73.3	71.4	65.8
Other sources	52.5	26.7	28.6	34.2
Total	100.0	100.0	100.0	100.0
NFCOJ:				
Brazil	72.4	95.5	85.7	86.3
Other sources	27.6	4.5	14.3	13.7
Total	100.0	100.0	100.0	100.0
Total:				
Brazil	49.0	76.0	72.7	68.0
Other sources	51.0	24.0	27.3	32.0
Total	100.0	100.0	100.0	100.0
Note.—Imports of FCOJM are from HTS statistical reporting number 2009.11.0060 and imports of NFCOJ are from HTS subheadings 2009.19.25 (for 2001) and 2009.12.25 (for 2002/04). Liters are converted to gallons by a conversion factor of .2642.				
Source: Compiled from official Commerce statistics.				

Brazil is the largest foreign supplier of certain orange juice to the United States; subject imports from Brazil accounted for 65.8 percent of the quantity of total imports in 2004/05, and 68.0 percent of the value.⁸ The quantity of imports of certain orange juice from Brazil increased by 107.1 percent from 2001/02 to 2002/03, decreased by 32.2 percent in 2003/04, and then increased by 50.3 percent in 2004/05. The value of imports of certain orange juice from Brazil increased by 144.3 percent from 2001/02 to 2002/03, decreased by 41.1 percent in 2003/04, and then rose by 62.9 percent in 2004/05. The quantity of imports from other countries fell 21.1 percent from 2001/02 to 2002/03, and then rose by 7.7 percent in 2003/04 and by 87.7 percent in 2004/05. U.S. imports from Brazil during January 2001-October 2005, by month, are presented in table IV-3 and figure IV-1.

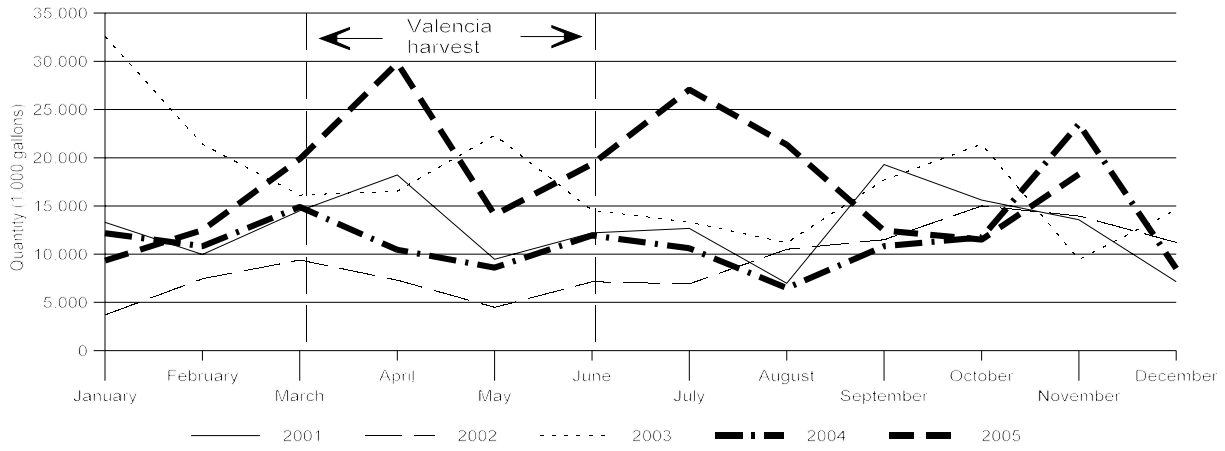
CRITICAL CIRCUMSTANCES

In its final affirmative determination of LTFV sales of the subject product from Brazil, Commerce made affirmative determinations of critical circumstances for Cutrale, Montecitrus, and all others. It made a negative determination of critical circumstances for Fischer/Citrosuco.⁹

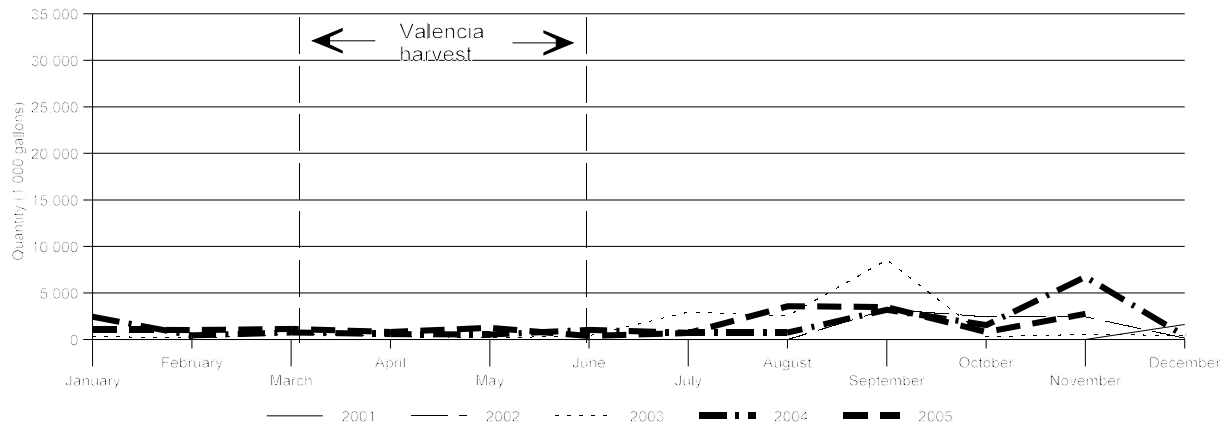
⁸ The remainder comes from Belize, Costa Rica, Honduras, Mexico, South Africa, and The Dominican Republic. The Caribbean, Central American, and Andean region countries benefit from preferential trade arrangements.

⁹ 71 FR 2183, January 13, 2006.

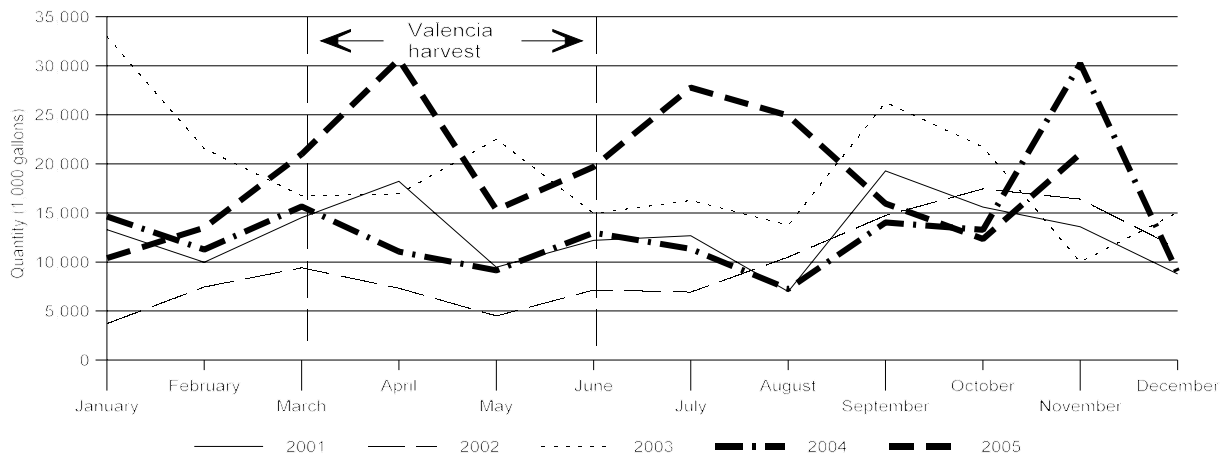
Figure IV-1
Certain orange juice: U.S. imports from Brazil, monthly, January 2001-November 2005
FCOJM



NFCOJ



Certain Orange Juice



Source: Table IV-3.

Table IV-3

Certain orange juice: U.S. imports for consumption from Brazil, by month, January 2001-October 2005

Item	January	February	March	April	May	June	July	August	September	October	November	December	Total
	Quantity (1,000 gallons SSE) ¹												
FCOJM													
2001	13,301	9,966	14,506	18,221	9,461	12,211	12,683	6,995	19,295	15,604	13,585	7,147	152,974
2002	3,719	7,463	9,412	7,318	4,511	7,148	6,932	10,510	11,509	15,020	13,968	11,229	108,739
2003	32,609	21,406	16,139	16,549	22,342	14,560	13,332	11,195	17,715	21,416	9,459	14,611	211,332
2004	12,189	10,832	14,908	10,475	8,622	11,945	10,621	6,502	10,838	11,743	23,500	8,528	140,703
2005	9,346	12,492	19,872	29,825	14,078	19,341	27,074	21,359	12,462	11,513	18,292	(²)	177,361
NFC													
2001	4	0	0	0	0	0	0	0	0	0	0	1,626	1,630
2002	0	0	0	0	0	0	0	0	3,245	2,435	2,436	161	8,278
2003	357	151	608	408	188	407	2,949	2,554	8,561	309	556	451	17,499
2004	2,449	441	757	579	531	1,036	726	757	3,192	1,547	6,744	388	19,148
2005	1,048	1,011	1,130	817	1,260	379	713	3,569	3,486	826	2,755	(²)	14,239
Total													
2001	13,305	9,966	14,506	18,221	9,461	12,211	12,683	6,995	19,295	15,604	13,585	8,773	154,605
2002	3,719	7,463	9,412	7,318	4,511	7,148	6,932	10,510	14,754	17,456	16,404	11,391	117,017
2003	32,966	21,558	16,747	16,958	22,530	14,968	16,281	13,748	26,275	21,725	10,014	15,062	228,831
2004	14,638	11,274	15,665	11,054	9,152	12,981	11,347	7,259	14,030	13,290	30,244	8,916	159,851
2005	10,394	13,503	21,001	30,643	15,338	19,720	27,786	24,928	15,948	12,339	21,047	(²)	191,600

¹ Conversion factor of liters to gallons SSE by a factor of .2642.

² Not available.

Source: Compiled from official Commerce statistics (FCOJM data are from HTS number 2009.11.0060; NFCOJ data are from HTS subheadings 2009.19.25 (in 2001) and 2009.12.25 (during 2002-05)).

If the Commission determines that an industry in the United States is materially injured by reason of LTFV imports of certain orange juice from Brazil, it must further determine “whether the imports subject to the affirmative {Commerce critical circumstances} determination . . . are likely to undermine seriously the remedial effect of the antidumping duty order to be issued.”¹⁰ The statute further provides that in making this determination, the Commission shall consider:

- (I) the timing and the volume of the imports,
- (II) a rapid increase in inventories of the imports, and
- (III) any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined.¹¹

Monthly import data and end-of-period inventories of imports of certain orange juice from Brazil (excluding imports from Fischer/Citrosuco reported by ***, for the period before and after the filing of the petition (June-December 2004 and January-July 2005), are presented in table IV-4.

Table IV-4
Certain orange juice: U.S. imports and end-of-period inventories for subject FCOJM and NFCOJ, by months, June 2004-July 2005

* * * * *

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

The United States is the largest consumer of orange juice in the world.¹² Data on apparent U.S. consumption of certain orange juice are presented in table IV-5. The quantity of total available orange juice for consumption fell 1.6 percent from 2001/02 to 2002/03, then increased by 0.7 percent in 2003/04, and by 4.5 percent in 2004/05. According to the petitioners, 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.¹³ On the basis of quantity, the U.S. producers’ market share decreased from 2001/02 to 2002/03, then rose in 2003/04 and fell again in 2004/05. Figure IV-1 presents data on U.S. production and U.S. imports of certain orange juice. U.S. production, supply, and distribution of certain orange juice, from 1989/90 to 2004/05, are presented in table IV-6.

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-7. Subject imports from Brazil were equivalent to 7.7 percent of U.S. production during 2001/02, increased to 18.2 percent during 2002/03, fell to 10.5 percent in 2003/04, and then rose to 23.0 percent in 2004/05.

¹⁰ Section 735(b)(4)(A)(i) of the Act (19 U.S.C. § 1673d(b)(4)(A)(i)).

¹¹ Section 735(b)(4)(A)(ii) of the Act (19 U.S.C. § 1673d(b)(4)(A)(ii)).

¹² Petition, p. 77.

¹³ Petition, p. 80.

Table IV-5

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, 2001/02-2004/05

Item	Crop year			
	2001/02	2002/03	2003/04	2004/05
<i>Quantity (1,000 gallons SSE)</i>				
FCOJM:				
Beginning stocks	470,985	466,736	475,061	567,867
U.S. production	877,816	654,031	881,885	382,836
Minus: U.S. exports	121,753	37,389	56,847	43,051
Minus: Ending stocks	466,736	475,061	567,867	397,846
Total domestic shipments	760,312	608,317	732,232	509,807
U.S. imports: Brazil	104,857	206,064	142,418	209,620
All other sources	73,140	58,708	62,603	117,209
Total imports	177,997	264,772	205,021	326,829
Apparent consumption	938,309	873,089	937,253	836,636
NFCOJ:				
Beginning stocks	227,479	225,427	229,448	274,272
U.S. production	554,346	592,730	589,449	623,806
Minus: U.S. exports	51,877	57,342	58,563	67,204
Minus: Ending stocks	225,427	229,448	274,272	192,154
Total domestic shipments	504,521	531,368	486,062	638,720
U.S. imports: Brazil	4,871	21,216	11,785	22,091
All other sources	2,419	881	1,564	3,223
Total imports	7,291	22,097	13,349	25,314
Apparent consumption	511,812	553,464	499,411	664,034
Total:				
Beginning stocks	698,464	692,163	704,509	842,139
U.S. production	1,432,162	1,246,761	1,471,334	1,006,642
Minus: U.S. exports	173,629	94,730	115,410	110,255
Minus: Ending stocks	692,163	704,509	842,139	590,000
Total domestic shipments	1,264,833	1,139,684	1,218,294	1,148,526
U.S. imports: Brazil	109,728	227,280	154,203	231,711
All other sources	75,559	59,589	64,167	120,432
Total imports	185,287	286,869	218,370	352,143
Apparent consumption	1,450,121	1,426,553	1,436,664	1,500,670

Table continued on next page.

Table IV-5--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, 2001/02-2004/05

Item	Crop year			
	2001/02	2002/03	2003/04	2004/05
Shares (percent)				
FCOJM:				
U.S. domestic shipments	81.0	69.7	78.1	60.9
U.S. imports: Brazil	11.2	23.6	15.2	25.1
All other sources	7.8	6.7	6.7	14.0
Total imports	19.0	30.3	21.9	39.1
Apparent consumption	100.0	100.0	100.0	100.0
NFCOJ:				
U.S. domestic shipments	98.6	96.0	97.3	96.2
U.S. imports: Brazil	1.0	3.8	2.4	3.3
All other sources	0.5	0.2	0.3	0.5
Total imports	1.4	4.0	2.7	3.8
Apparent consumption	100.0	100.0	100.0	100.0
Total:				
U.S. domestic shipments	87.2	79.9	84.8	76.5
U.S. imports: Brazil	7.6	15.9	10.7	15.4
All other sources	5.2	4.2	4.5	8.0
Total imports	12.8	20.1	15.2	23.5
Apparent consumption	100.0	100.0	100.0	100.0
<p>Note: Total beginning stocks, total U.S. production, and total ending stocks, are from PS&D Online statistics; U.S. imports and U.S. exports are from official Commerce statistics; estimation of U.S. production of FCOJM and NFCOJ is based on the yearly percentage of Florida production of FCOJM and NFCOJ reported in Citrus Fruits Summary (oranges processed by product type), and estimation of ending stocks of FCOJM and NFCOJ are based on the period of investigation average percentage of end-of-period inventories of FCOJM and NFCOJ reported in response to Commission questionnaires. Metric tons converted to gallons SSE by a conversion factor of 1,405.88.</p> <p>Source: Compiled from data submitted in response to Commission questionnaires; official Commerce statistics; USDA, Foreign Agricultural Service, PS&D Online statistics, October 7, 2005; <i>Citrus Fruits 2004 Summary</i>, NASS, USDA, September 2004; <i>Citrus Fruits 2005 Summary</i>, NASS, USDA, September 2005.</p>				

Figure IV-1
Orange juice: U.S. production and imports from Brazil, crop years 1989/90-2004/05



Source: USDA, FAS, PS&D online (production); USITC Publication 1970, table 47 (1984/85-1985/86 imports), and official Commerce statistics (1989/90-2004/05 imports).

Table IV-6

Certain orange juice: U.S. production, supply, and distribution, crop years 1989/90-2004/05

Crop year	Beginning stocks	Production	Imports from Brazil	Total imports	Total supply	Exports	Domestic consumption	Ending stocks	Total distribution
	Quantity (1,000 gallons SSE)								
1989/90	232,811	652,300	411,053	492,263	1,377,374	89,930	1,062,026	225,419	1,377,374
1990/91	225,419	876,239	266,247	327,269	1,428,927	97,023	1,174,223	157,681	1,428,927
1991/92	157,681	929,939	248,559	286,126	1,373,746	107,208	1,096,412	170,126	1,373,746
1992/93	170,126	1,206,509	260,541	324,050	1,700,685	114,482	1,336,834	249,368	1,700,685
1993/94	249,368	1,133,210	360,457	403,575	1,786,152	106,598	1,319,146	360,409	1,786,152
1994/95	360,409	1,256,772	143,404	198,469	1,815,650	116,563	1,264,605	434,483	1,815,650
1995/96	434,483	1,271,059	147,169	260,713	1,966,255	119,335	1,429,912	417,008	1,966,255
1996/97	417,008	1,437,033	192,574	256,428	2,110,469	147,979	1,398,662	563,828	2,110,469
1997/98	563,828	1,554,917	174,870	304,522	2,423,268	148,195	1,596,357	678,715	2,423,268
1998/99	678,715	1,236,086	260,105	345,530	2,260,332	150,207	1,576,319	533,806	2,260,332
1999/2000	533,806	1,506,683	235,217	339,325	2,379,813	145,530	1,588,802	645,482	2,379,813
2000/01	645,482	1,438,692	165,730	257,927	2,342,100	122,583	1,521,054	698,464	2,342,100
2001/02	698,464	1,432,162	109,728	188,724	2,319,349	181,228	1,445,959	692,163	2,319,349
2002/03	692,163	1,246,761	227,280	291,059	2,229,983	103,014	1,422,460	704,509	2,229,983
2003/04	704,509	1,471,334	154,203	222,347	2,398,189	123,228	1,432,822	842,139	2,398,189
2004/05	842,139	1,006,642	231,711	351,470	2,200,251	112,470	1,497,781	590,000	2,200,251

Note: Metric tons converted to gallons SSE by a factor of 1,405.88.

Source: Foreign Agricultural Service, USDA, *PS&D Online* (www.fas.usda.gov/psd/complete_tables/HTP-table6-118.htm).

Table IV-7
Certain orange juice: Ratio of U.S. imports to U.S. production, by sources, crop years 2001/02-2004/05

Item	Crop year			
	2001/02	2002/03	2003/04	2004/05
Quantity (1,000 gallons SSE)				
U.S. production of FCOJM	877,816	654,031	881,885	382,836
U.S. production of NFCOJ	554,346	592,730	589,449	623,806
Total U.S. production	1,432,162	1,246,761	1,471,334	1,006,642
Ratio of U.S. imports to production (percent)				
FCOJM:				
Brazil	11.9	31.5	16.1	54.8
Nonsubject sources	8.3	9.0	7.1	30.6
All countries	20.3	40.5	23.2	85.4
NFCOJ:				
Brazil	0.9	3.6	2.0	3.5
Nonsubject sources	0.4	0.1	0.3	0.5
All countries	1.3	3.7	2.3	4.1
Total:				
Brazil	7.7	18.2	10.5	23.0
Nonsubject countries	5.3	4.8	4.4	12.0
All sources	12.9	23.0	14.8	35.0
Note: Pounds solids converted to gallons SSE by a conversion factor of 1.029.				
Source: Compiled from PS&D Online, FAS, USDA, 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 2004/05. Orange prices (delivered in) fluctuated between crop year 2000/01 and crop year 2004/05, increasing by 11 percent (figure V-1). The Florida and Sao Paulo orange crops also fluctuated during the same period with the Florida orange crop falling by 33 percent and the Brazilian orange crop increasing by 7 percent.

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 9 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 certain orange juice ranged between 2 percent and 12 percent for both U.S. extractor/processors and importers.¹ Four of eight responding firms indicated that some of their sales of U.S.-produced certain orange juice was delivered directly to the futures market, while two of five firms reported that their sales of imports were delivered directly to the futures market. *** and *** reported that *** percent and *** percent of their sales of U.S.-produced certain orange juice, respectively, were delivered directly to the futures market, while *** reported that *** percent of its sales of its imports of certain orange juice were delivered directly to the futures market. *** reported that less than *** percent of its sales of both U.S.-produced and imports of certain orange juice were delivered directly to the futures market, while *** reported that *** percent of its sales of U.S. produced certain orange juice was delivered directly to the futures market.

Exchange Rates

Quarterly data reported by the International Monetary Fund for the Brazilian real from January 2001 through September 2005 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 by 13.2 percent during the period examined, the real value increased by 38.7 percent.

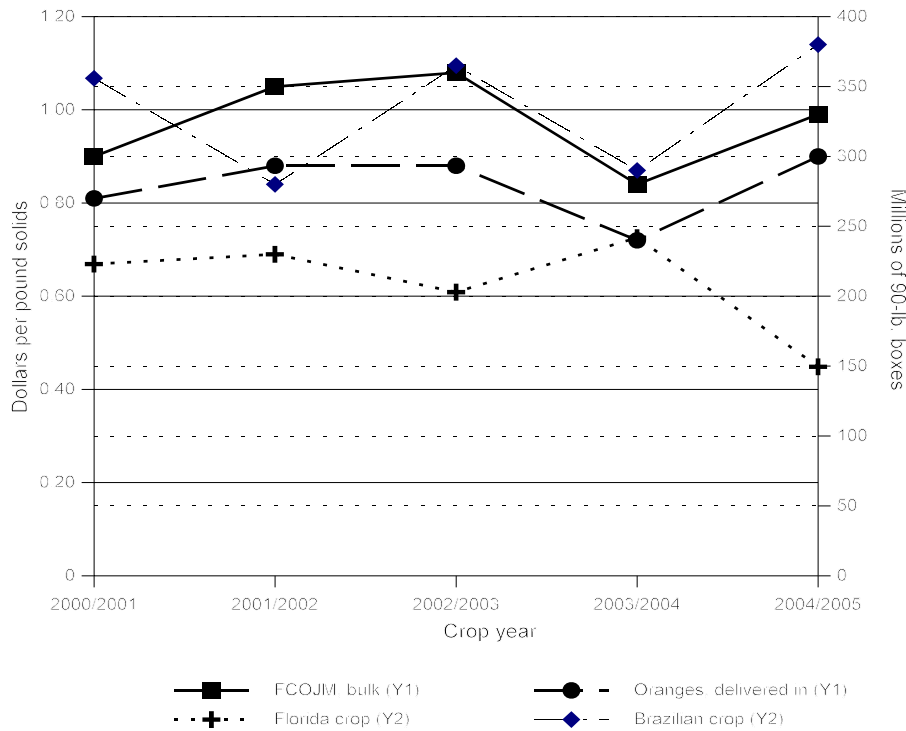
PRICING PRACTICES

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.

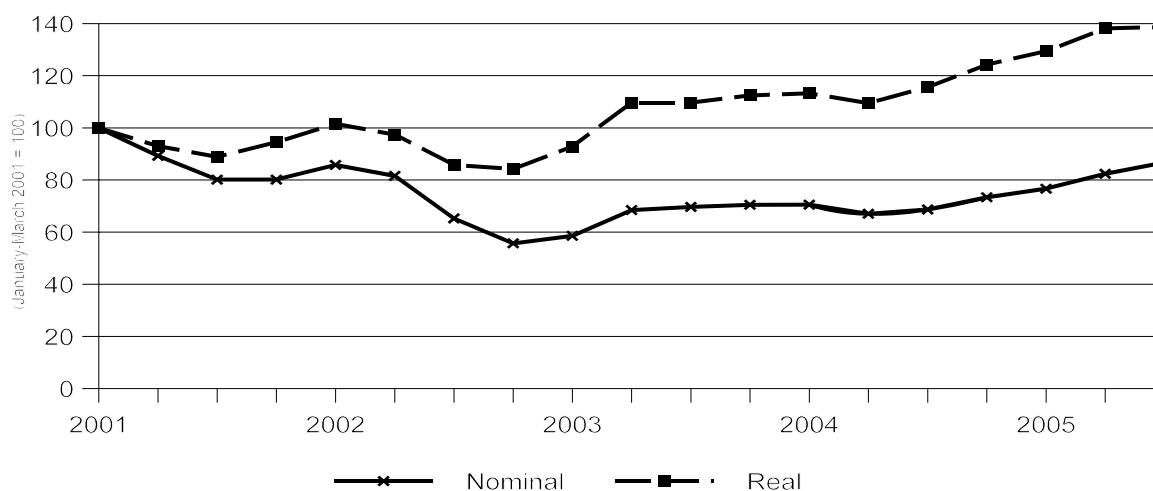
¹ ***.

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); FCPA, Statistical Reports, July, 16, 2005; Citrus Production Forecast, various issues, (FASS); Brazil Citrus Annual Report 2004, Gain Report (FAS, USDA), Dec. 21, 2004, Brazil Citrus Semi-Annual Report 2005, June 22, 2005 and previous releases; Florida Citrus Outlook 2005-06 Season, Florida Department of Citrus, December 21, 2005.

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 2005



Source: International Monetary Fund, *International Financial Statistics*, retrieved from <http://ifs.apdi.net/imf/about.asp> on Nov. 18, 2005.

Most extractor/processors and importers indicated that a majority of their sales of certain orange juice are made on either a short-term contract or spot basis, and sales of NFCOJ are almost always made on either a long-term or short-term contract basis. The exceptions are ***. Other firms reporting at least some long-term contract sales were ***. *** were the only firms who both sell NFCOJ and report spot sales of certain orange juice. These spot sales consist of *** percent of their sales of certain orange juice respectively.

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. Extractors/processors and importers generally reported that they do not renegotiate prices during the contract period. Only one extractor/processor/importer and one importer reported having meet-or-release provisions.

Although petitioners could not identify any price leaders in the U.S. market,² they indicate 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 claim 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 claim that although Brazil's 17-percent market share in 2003/04 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

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

³ Petitioners' postconference brief, p. 39.

⁴ Conference transcript, p. 41 (Warlick).

juice was needed in the U.S. market.⁵ Respondents indicate that processor/extractors 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

Thirteen purchasers indicated that there are price leaders in the market for certain orange juice. Louis Dreyfus was named a price leader by five purchasers (***) ; Cargill and Cutrale USA were named by four purchasers;⁷ A. Duda and Tropicana were named by three purchasers; Citrusuco NA and Southern Gardens were named by two purchasers; and Minutemaid, Citrus World, Citrus Products were named by one purchaser.⁸ One purchaser (***) named several countries and a region (Mexico, Costa Rica, Belize, and Central America) as price leaders. Another purchaser (***) indicated that Brazilian firms in general have had the greatest impact on market prices since 2002. Two purchasers specially indicated that there were no price leaders in the market for certain orange juice. Six purchasers specifically indicate that the futures price of certain orange juice exercises price leadership in the market, while another three purchasers specifically indicated that the futures price does not exercise price leadership. One purchaser (***) indicated that the futures price has little or no impact on the price of organic FCOJM and NFCOJ.

PRICE DATA

The Commission requested U.S. extractor/processors and importers of FCOJM and NFCOJ to provide monthly data for the total quantity and f.o.b. value of FCOJM and NFCOJ that were shipped to unrelated customers in the U.S. market. Data were requested for the period October 2001 to September 2005. 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, not organic

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

Product 3.–Frozen concentrated orange juice for manufacturing (FCOJM) of 65 degrees Brix and six or seven strength concentrate, organic

Ten U.S. extractor/processors and six 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 months. By quantity, pricing data reported by responding firms in 2004/05 accounted for almost all of U.S. extractor/processors' shipments of FCOJM and *** percent of U.S. extractor/processors' shipments of NFCOJ, and approximately *** 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, V-2, and V-3, and figure V-3.⁹ Average monthly nearby futures prices for FCOJM from January 1995 through October 2005 are presented in figure V-4.

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

⁶ Respondents Cutrale and Louis Dreyfus's postconference brief, p. 8.

⁷ One of the four purchasers who named Cutrale USA as a price leader referred to them as Citrus World.

⁸ Note that Tropicana and Minutemaid only make sales in the retail market. *** indicated that Tropicana and Minutemaid were price leaders in the retail orange juice market. The only firm specifically named a price leader for NFCOJ was Tropicana by ***.

⁹ Only data for Brazilian product 3 were provided in questionnaire responses.

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 month, October 2001- September 2005

Period	United States		Brazil		
	Price (per pound SE)	Quantity (thousands of pounds SE)	Price (per pound SE)	Quantity (thousands of pounds SE)	Margin (percent)
2001:					
October	\$0.91	72,790	\$0.88	13,226	2.9
November	0.93	47,660	0.91	12,649	2.0
December	0.99	56,626	0.87	10,021	12.2
2002:					
January	1.00	57,704	1.06	6,523	(6.6)
February	0.98	67,433	0.95	6,014	2.9
March	0.95	50,703	0.99	6,121	(3.7)
April	1.01	66,379	0.97	12,164	3.5
May	1.00	74,384	0.96	10,155	4.3
June	1.01	44,678	0.93	4,735	7.6
July	1.02	39,679	0.98	6,773	4.4
August	1.03	36,000	1.00	6,762	2.4
September	1.06	43,565	0.91	9,582	13.9
October	0.98	41,763	0.99	14,827	(0.5)
November	0.99	35,488	0.97	12,439	2.4
December	1.01	37,796	1.02	15,087	(1.0)
2003:					
January	1.07	59,646	0.99	27,910	7.9
February	1.08	38,828	1.06	17,223	1.4
March	1.09	36,725	0.89	21,179	18.6
April	1.10	31,739	0.90	14,642	18.1
May	1.07	46,843	1.03	18,611	3.2
June	0.98	64,351	0.98	13,424	0.0
July	1.00	46,839	0.96	13,672	3.5
August	1.02	38,540	1.00	13,014	1.1
September	0.97	46,104	0.88	12,773	9.6

Table continued on next page.

Table V-1--Continued

Certain orange juice: Weighted-average f.o.b. prices and quantities of domestic and imported product 1,¹ and margins of underselling/(overselling), by month, October 2001- September 2005

Period	United States		Brazil		
	Price (per pound SE)	Quantity (thousands of pounds SE)	Price (per pound SE)	Quantity (thousands of pounds SE)	Margin (percent)
2003:					
October	\$1.05	38,970	\$0.96	18,467	8.1
November	0.89	70,347	0.94	10,780	(6.4)
December	1.03	42,628	0.88	11,846	14.7
2004:					
January	0.93	47,202	0.79	12,628	15.7
February	0.94	41,650	0.86	10,006	8.6
March	0.82	56,593	0.82	9,353	0.5
April	0.81	61,935	***	***	***
May	0.75	89,012	0.61	19,373	18.1
June	0.80	36,778	***	***	***
July	0.80	35,865	***	***	***
August	0.78	40,870	0.81	7,630	(3.1)
September	0.83	38,152	0.74	18,039	11.6
October	0.85	37,629	***	***	***
November	0.84	45,482	***	***	***
December	0.94	43,186	***	***	***
2005:					
January	0.95	40,304	***	***	***
February	0.93	26,922	***	***	***
March	0.95	30,395	0.83	18,986	13.0
April	1.00	69,984	0.94	11,560	5.6
May	0.98	88,353	0.83	20,715	15.4
June	0.95	30,014	0.96	12,184	(0.8)
July	0.98	34,422	0.86	17,395	12.3
August	1.01	38,072	***	***	***
September	0.98	44,607	***	***	***

¹ Frozen concentrated orange juice for manufacturing (FCOJM) of 65 degrees Brix and six or seven strength concentrate, not organic.

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

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 month, October 2001- September 2005

* * * * *

Table V-3

Certain orange juice: Weighted-average f.o.b. prices and quantities of imported product 3, by month, October 2001- September 2005

* * * * *

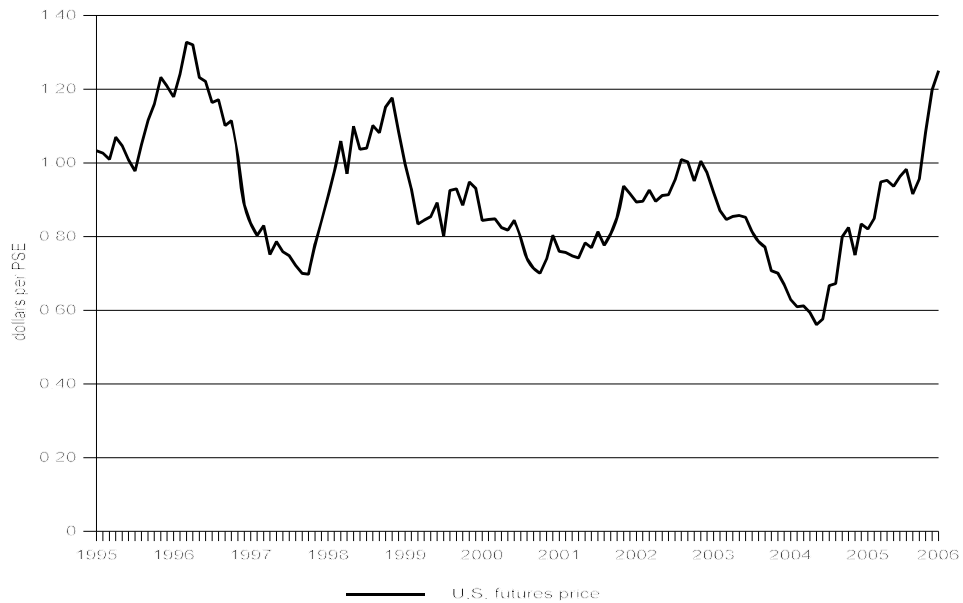
Figure V-3

Certain orange juice: Weighted-average f.o.b. prices of domestic and imported products 1, 2, and 3 by month, October 2001-September 2005

* * * * *

Figure V-4

Certain orange juice: Nearby FCOJM futures prices by month, January 1995-January 2006



Source: NYBOT.

Price Trends

Prices of domestic and Brazilian products 1 and 2 fluctuated between October 2001 and September 2005. The weighted-average sales prices of the U.S.-produced and Brazilian product 1 FCOJM increased by 8 and *** percent, respectively, between October 2001 and September 2005, while weighted-average sales prices of the U.S.-produced and Brazilian product 2 increased by *** percent and decreased by *** percent, respectively, during the same period.

Price Comparisons

Overall there were 87 instances where prices for domestic certain orange juice and imported subject certain orange juice could be compared. Of these 87 comparisons, there were 46 instances (53 percent) where the subject imported product was priced below the domestic product. Margins of underselling averaged 7.8 percent, ranging from less than one percent to 18.6 percent. In 41 instances, the subject imported product was priced above the comparable domestic product. Margins of overselling averaged 14.2 percent, ranging from 0.5 percent to 34.3 percent.¹⁰

For product 1 (nonorganic FCOJM) there were 48 instances where prices for domestic FCOJM and imported subject FCOJM could be compared. Of these 48 comparisons, there were 41 instances (85 percent) where the subject imported product was priced below the domestic product. Margins of underselling averaged 8.3 percent, ranging from 0.0 percent to 18.6 percent. In 7 instances, the subject imported product was priced above the comparable domestic product. Margins of overselling averaged 3.2 percent, ranging from 0.5 percent to 6.6 percent.

For product 2 (nonorganic NFCOJ) there were 39 instances where prices for domestic NFCOJ and imported subject NFCOJ could be compared. Of these 39 comparisons, there were 5 instances (13 percent) where the subject imported product was priced below the domestic product. Margins of underselling averaged 4.0 percent, ranging from 0.6 percent to 7.2 percent. In 34 instances, the subject imported product was priced above the comparable domestic product. Margins of overselling averaged 16.5 percent, ranging from 1.6 percent to 34.3 percent.

Petitioners argued that Citrusuco NA's Brazilian product 2 price data do not appear to reflect arm's-length values as requested in the questionnaire since they may include ***.¹¹ In the absence of Citrusuco NA's price data for product 2, there were ***. Respondents indicated that most imports are sold using long term contracts for which the price is fixed in relationship to the futures price and therefore cannot be suppressing prices.¹² However, the issue of long-term contracts was not raised by any party in comments on the draft final phase questionnaires.

Both petitioners and respondents indicate that FCOJM prices are determined by orange juice futures prices¹³ and that U.S. inventories of certain orange juice are correlated with orange juice futures

¹⁰ The correlation coefficient between prices for domestic products 1 and 2 their corresponding subject Brazilian pricing products were 0.77 and 0.37, 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.

¹¹ Petitioners' posthearing brief, attach. 1: Response to Commission and staff questions, p. 26.

¹² Respondent Fischer's posthearing brief, pp. 10-11 and respondents Cutrale and Louis Dreyfus's posthearing brief, p. 11.

¹³ Petitioners' postconference brief, p. 38 and respondents Cutrale and Louis Dreyfus'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.

prices.¹⁴ However, petitioners assert 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. processor/extractors 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 processor/extractors in world markets, Brazilian production has a greater impact on futures prices than U.S. production.¹⁵

Respondents assert 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.¹⁶ Using quarterly data from the first quarter of 1994 to the third quarter of 2004, respondents claimed in their postconference brief 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.¹⁷ Using monthly data from January 1995 to July 2005, respondents estimate in their prehearing brief that a one percent change in volume of general imports of FCOJM from Brazil decreases the futures price for FCOJM by -0.008.¹⁸

Although respondents did not provide a quantitative estimate of the impact of actual changes in Brazilian imports on the futures price, their estimates suggest that if Brazilian imports of FCOJM doubled, the futures price would decrease by amounts ranging from less than one percent to 1.5 percent.¹⁹ They indicated that supply shocks, domestic sales, and inventories play a much more important role in explaining FCOJM futures price than imports of FCOJM from Brazil, and indicates that the low responsiveness of the futures price of FCOJM to imports of FCOJM from Brazil is due to the small U.S. market share of imports of FCOJM from Brazil and high level of FCOJM inventories.

In a separate analysis, respondents estimate in their prehearing brief a correlation coefficient of 0.12 between the futures price and imports of FCOJM and NFCOJ from Brazil and claim it is due to complementarity between imports from Brazil and U.S. produced orange juice.²⁰ Respondents also claimed to show that factors other than imports from Brazil can explain almost all of the variation in consumer demand for retail orange juice, growth in inventories of certain orange juice, yield per acre and

¹⁴ Petitioners' postconference brief, p. 38 and respondents Cutrale and Louis Dreyfus's postconference brief, p. 8 and exhibit 2.

¹⁵ Petitioners' postconference brief, pp. 38-39.

¹⁶ Respondents Cutrale and Louis Dreyfus's postconference brief, pp. 1, 30-31.

¹⁷ Respondents Cutrale and Louis Dreyfus's postconference brief, 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. Respondents Cutrale and Louis Dreyfus's postconference brief, exhibit 2, table 2. Respondents calculate 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 calculate inventories as end of a quarter inventories divided by the average inventory for that quarter. Respondents Cutrale and Louis Dreyfus's postconference brief, exhibit 2, table 1.

In their postconference brief, respondents 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 1980's could be taken into account. Respondents Cutrale and Louis Dreyfus's postconference brief, exhibit 2, p. 26.

¹⁸ Respondents Cutrale and Louis Dreyfus's prehearing brief, exhibit 2. Their model is based on a model by Montague Lord (1991). They justify using general imports rather than import for consumption because imports for consumption could possibly underestimate the impact FCOJM imports have on price and because inventory data include product stored in bonded warehouses which are not included in import for consumption.

¹⁹ Respondents Cutrale and Louis Dreyfus's prehearing brief, exhibit 3, p. 6.

²⁰ Respondents Cutrale and Louis Dreyfus's prehearing brief, exhibit 3, p. 6.

bearing acreage for juice oranges, and retail orange juice prices, and that imports of certain orange juice from Brazil are a stabilizing buffer in the U.S. market.²¹

In response to respondents' analysis, petitioners claimed there is no linear correlation between import volume fluctuations and U.S. prices because imports are sometimes purchased by the U.S. industry in times of short crops, which often correlate with higher U.S. prices.²² They argued that there is evidence of a non-linear relationship between futures prices and fundamentals in the FCOJM market, although they did not specify what form or magnitude of this relationship.²³

Based on daily data from January 1, 1984 to November 11, 1998, Boudoukh et al., forthcoming, estimated that the volatility of the FCOJ futures price is higher on days when articles on Brazil appear in the Wall Street Journal.²⁴ Also, citing annual data from 1977-1996, they indicated that when the U.S. suffers negative supply shocks Brazilian FCOJ replaces about 80 percent of the lost production.²⁵ In an earlier version of the paper which has a more detailed analysis of imports, they indicated that decreases in U.S. production are matched by an increase in imports much more than increases in U.S. production are matched by decreases in imports indicates that there is a nonlinearity in the demand curve or fixed transaction costs.²⁶ Applying a similar methodology to data from crop year 1995/96 to 2004/05, respondents indicated that U.S. supply shocks have a much more symmetric relationship with imports

²¹ Respondents Cutrale and Louis Dreyfus's prehearing brief, exhibit 3, pp. 19, 26, 32, 35, and 62. Respondents estimate several ordinary least squares regression models on annual data (they use annual data for the import model) for various orange juice variables without reference to a theoretical framework and control for or provide test results for autoregression, stationarity, endogeneity as is done in their analysis in exhibit 3. They also focus on the value of the R-squared in making their claim that most variation is due to factors other than imports from Brazil. The analysis for yield per acre and bearing acreage do not control for imports of certain orange juice and the analysis for growth in inventories uses imports as a share of the previous years inventories a proxy for imports. Respondents Louis Dreyfus and Cutrale indicate that the level of analytic rigor applied to analysis in exhibit 3 was appropriate in the context of an ITC proceeding, took the traditional ITC analysis a significant step further by accounting for the simultaneous interaction of several variables and looking at 10 to 12 years, rather than just 3 to 4 years of annual data. Respondents Cutrale and Louis Dreyfus's posthearing brief, exhibit 2, p. 17.

²² Petitioners' posthearing brief, p. 5.

²³ Petitioners' posthearing brief, attach. 1: Response to Commission and staff questions, p. 72. The paper they cite is Boudoukh, Richardson, Shen, and Whitelaw, "Do Asset Prices Reflect Fundamentals? Freshly Squeezed Evidence From the OJ Market," Journal of Financial Economics, forthcoming. Petitioner indicate that Spreen, Brewster, and Brown, "The Free Trade Area of the Americas and the Market for Processed Orange Products," Journal of Agricultural and Applied Economics, April 2003 shows that there are price effects in the U.S. from increased Brazilian imports and would refute respondents Louis-Dreyfus and Cutrale's analysis in exhibits 2 and 3 of their posthearing brief. However, petitioners do not indicate the magnitude of the price effect or the parts of the respondents' analysis that would be refuted.

Respondents Louis-Dreyfus and Cutrale indicate that the analysis from exhibit 2 in their prehearing brief assumes not a linear, but a log linear relationship between Brazilian imports and the futures price of FCOJM and that adding quadratic and cubic terms for imports in the analysis are statistically insignificant. Respondents Cutrale and Louis Dreyfus's posthearing brief, exhibit 2, p. 17.

²⁴ Boudoukh et al., forthcoming, p. 15. However, the authors note that the Wall Street Journal may search for stories to report during periods of high volatility, so the causality may be reversed (i.e. volatility causes news articles).

²⁵ Boudoukh et al., forthcoming, pp. 15-16.

²⁶ Boudoukh, Richardson, Shen, and Whitelaw, "Do Asset Prices Reflect Fundamentals? Freshly Squeezed Evidence From the OJ Market," NBER working paper, February 2003, pp. 32-33. Note that corresponding author, Robert Whitelaw indicates that the paper was shortened dramatically at the request of the referee/editor. He indicates he cannot recall any criticism of their imports analysis from the journal or elsewhere), but it was considered tangential to the main point of the paper. E-mail from Robert Whitelaw, January 13, 2005.

than Bouddoukh et al., 2003 found in the earlier data, using this as evidence that the nonlinear relationship in the demand for imports may no longer exist.²⁷

Several responding extractor/processors, importers, and purchasers indicated that changes in inventories of FCOJM impact the futures price for FCOJM. Although several responding firms indicated that the futures price for FCOJM has an impact on the price of NFCOJ, one firm indicated impact of the futures price on the price of NFCOJ was to the extent that juice orange prices were affected by changes in the futures price and another indicated that the price of NFCOJ is set by industry leaders.

Figure V-5 compares the prices of U.S.-produced products 1 and 2, the orange juice futures price, and Florida crop estimates.²⁸ Correlation coefficients between the price of U.S.-produced product 1, 2, and 3 and the orange juice futures prices were 0.63, 0.41, and -0.19 respectively, while correlation coefficients between the two pricing products and the Florida crop report were and -0.32, -0.54, and -0.17 respectively. Figure V-6 shows the relationship between U.S. and global stock as a share of apparent consumption compared to the price of FCOJM. Correlation coefficients between U.S. and global stocks as a share of apparent consumption as measured by PSD and the price of FCOJM were -0.54 and -0.61 respectively, while correlation coefficients between U.S. stocks as measured by the Florida Citrus Processor Association crop report was -0.41.

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.²⁹ Petitioners indicated that it is difficult to make traditional lost sales/revenue allegations because U.S. customers have co-supply relationships with both domestic producer and Brazilian suppliers and that it is not possible for a domestic producer to say that they lost a contract for a specific volume to subject imports at a specific price on a particular date.³⁰ Instead they indicated that orders by customers will decline over time and the domestic producer will later find that the customer increased its supply from Brazilian imports at a lower price over the same period.³¹

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-4).

Table V-4
Certain orange juice: U.S. extractor/processors' lost sales allegations

* * * * *

*** indicated that he disagreed with the allegation involving ***. He indicated that in ***.³² 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.³³

²⁷ Respondents Cutrale and Louis Dreyfus's posthearing brief, exh. 2, pp. 8-9.

²⁸ Monthly 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.

²⁹ ***.

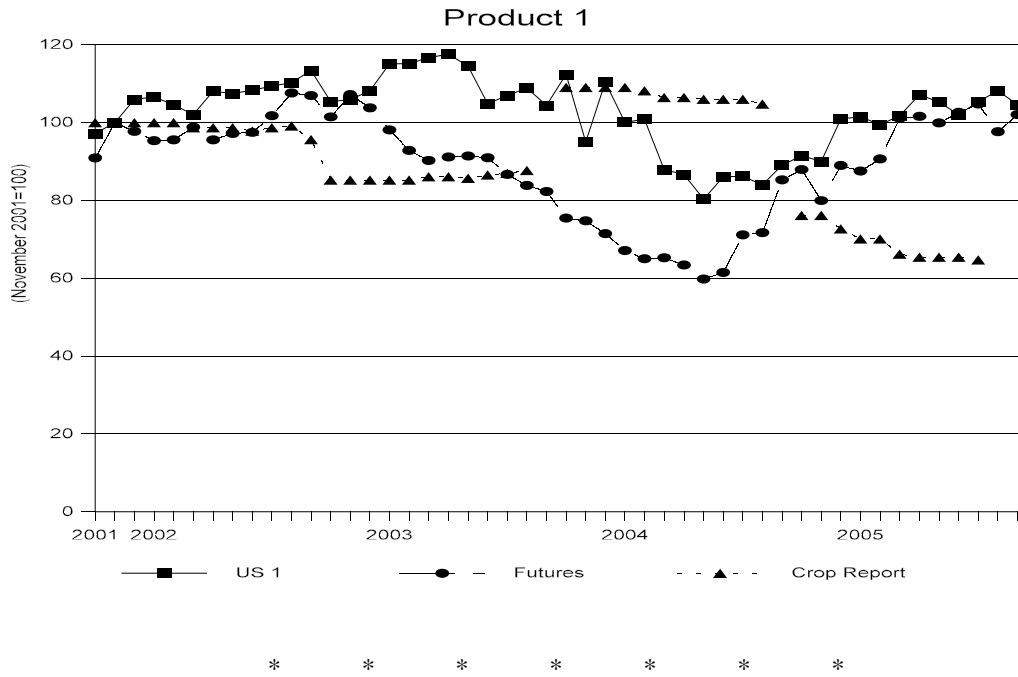
³⁰ Petitioners' posthearing brief, attach. 1, response to Commission and staff questions, p. 46.

³¹ Ibid.

³² Staff telephone interview with ***, February 24, 2006.

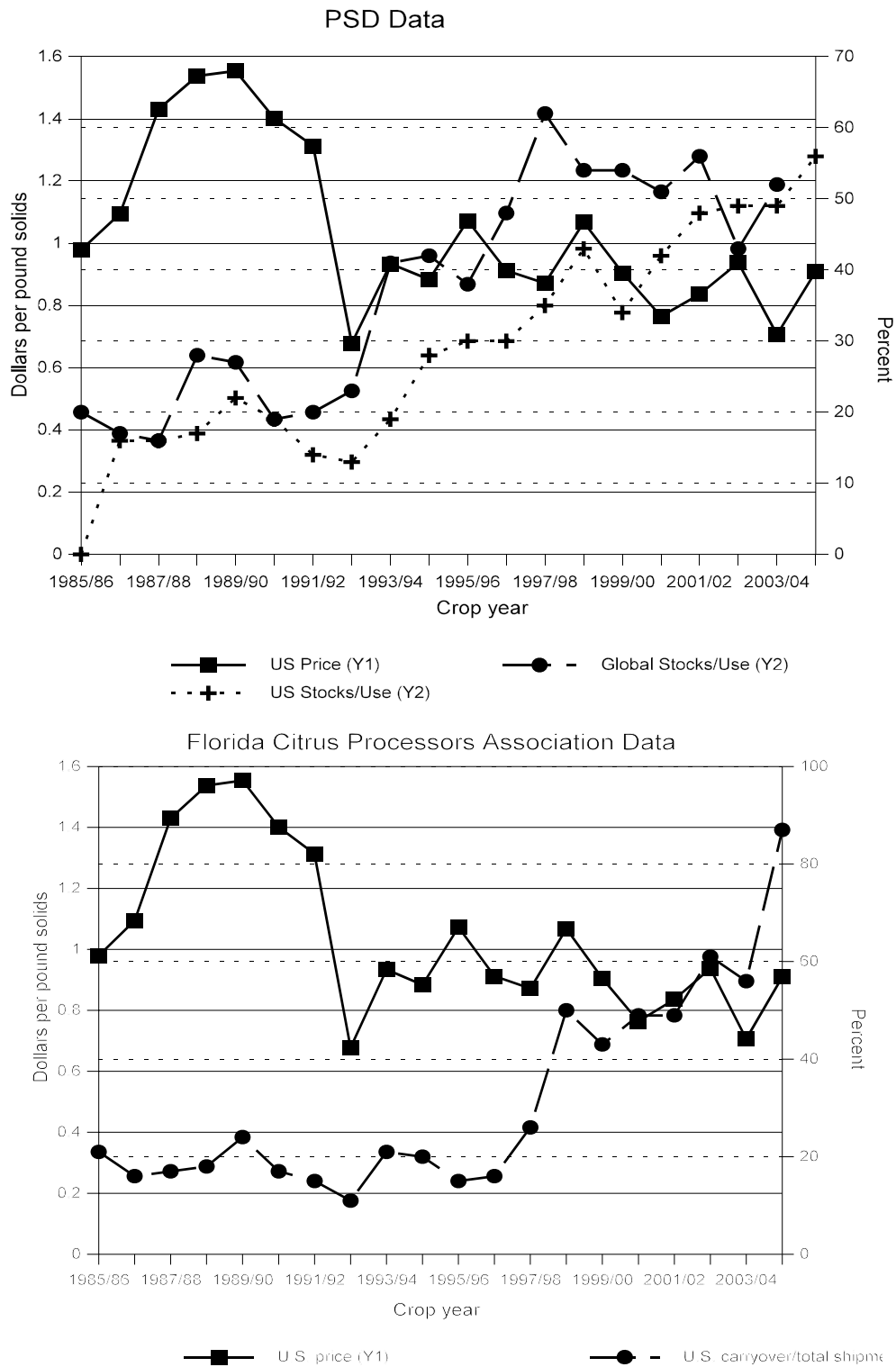
³³ Staff telephone interview with ***, February 10, 2006.

Figure V-5
Certain orange juice: Price indices of weighted-average f.o.b. prices of domestic products 1, 2, and 3, the average orange juice futures price, and average USDA Florida crop report, October 2001-September 2005



Source: Tables V-1 to V-3; USDA, Citrus Production Forecast, (FASS), various issues; and NYBOT.

Figure V-6
Certain orange juice: U.S. and Global Stocks of FCOJM as a share of apparent consumption, U.S. carryover FCOJM as a share of total shipments, and U.S. price of bulk FCOJM



Source: Data from USDA, FAS, PSD, and Florida Citrus Processor Association.

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 2004/05. *** was the *** to report internal consumption of FCOJM (*** percent in terms of total net sales value in 2004/05) and *** was the *** to report transfers to related firms of FCOJM (*** percent in terms of total net sales value in 2004/05). No internal consumption or related transfers were reported for NFCOJ.

The questionnaire data of Louis Dreyfus were verified with company records at its corporate facilities. The verification adjustments were incorporated into this report. The adjustments for Louis Dreyfus resulted in ***. Additional net by-product revenues are reflected in this report, and the details are discussed in the text as well as any inventory revaluation reported in the financial data.

OPERATIONS ON CERTAIN ORANGE JUICE EXTRACTOR/PROCESSORS

Results of operations of the U.S. extractor/processors on their non-toll 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 ratio.³ Aggregate income-and-loss data for extractor/processors on their non-toll FCOJM processing operations are presented in table VI-2, while those data on non-toll NFCOJ are separately shown in table VI-3. Results of toll processing operations of two tollers, ***, are presented in tables VI-7 and VI-8. 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 the extractor/processors on their non-toll certain orange juice operations (table VI-1) deteriorated continuously from 2002/03 to 2004/05. The net sales value and operating income decreased from 2002/03 to 2004/05, due mainly to a decrease in the per-pound selling price (from \$1.08 to \$0.94 per pound). Even though the quantity sold increased slightly from 2003/04 to 2004/05, the quantity of commercial sales actually decreased somewhat between two periods. While sales quantity decreased somewhat from interim 2004 to interim 2005, sales value increased during the same period, due primarily to an increase in the per-pound selling price (from \$0.90 to \$1.04 per pound). However, operating income decreased from interim 2004 to interim 2005 because per-pound total cost increased more than an increase of per-pound selling price.

Table VI-1

Certain orange juice: Results of non-toll operations of U.S. extractor/processors on combined FCOJM and NFCOJ, fiscal years 2002/03-2004/05, January-September 2004, and January-September 2005

* * * * *

¹ The producers and their fiscal year ends are as follows: ***. *** not provided a response in the final phase of the investigation, even though *** in the preliminary phase. ***.

² ***.

³ ***.

Sales quantity and value and operating income on non-toll FCOJM (table VI-2) decreased continuously between 2002/03 and 2004/05, i.e., operating income in 2002/03 changed to operating losses in 2004/05, due to a decrease in the per-pound selling price. Between the two interim periods, while sales quantity decreased, sales value increased due to an increase in the per-pound selling price (from \$0.85 to \$0.98 per pound). However, the operating income decreased substantially between the two interim periods because the increase in per-pound total cost was greater than the increase in per-pound selling price. On the other hand, the financial results on non-toll NFCOJ operations (table VI-3) are somewhat different from results of operations on FCOJM operations, because sales quantity and value between 2002/03 and 2004/05 fluctuated while operating income decreased continuously over the same period. Between interim 2004 and interim 2005, even though both sales quantity and value on NFCOJ increased, operating income decreased for the same period because per-pound total cost increased more than the increase in per-pound selling price. While 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 those for FCOJM.

Table VI-2

FCOJM: Results of non-toll operations of U.S. extractor/processors, fiscal years 2002/03-2004/05, January-September 2004, and January-September 2005

* * * * *

Table VI-3

NFCOJ: Results of non-toll operations of U.S. extractor/processors, fiscal years 2002/03-2004/05, January-September 2004, and January-September 2005

* * * * *

Selected financial data, by firm, are presented in table VI-4. ***, experienced operating income for all periods for which data were collected, while ***. *** experienced substantial operating losses in 2004/05. Three extractor/processors, ***, showed improved profitability in the recent periods, 2004/05 and interim 2005.

Table VI-4

Certain orange juice: Results of operations of U.S. extractor/processors on FCOJM and NFCOJ, by firm, fiscal years 2002/03-2004/05, January-September 2004, and January-September 2005

* * * * *

Some extractor/processors, ***, did not report net by-product revenues before, but the effect of these revenues are reflected in this report. By-product revenues can be treated either as a cost reduction of the main or joint products, or as a separate item of revenue or other income.⁴ However, by-products are traditionally accounted for by subtracting net by-product revenue from joint production costs.⁵ Net income and the net income margin are the same whether by-product revenues are subtracted from COGS or are left out of COGS and treated as a part of other income. Additional information was reported regarding whether and how much a revaluation of inventory and mark to market adjustments were

⁴ *Cost Accounting (ninth Edition)*, Horngreen, Foster, Datar, Prentice Hall, 1997, p. 558.

⁵ *The Managerial and Cost Accountant's Handbook*, Black and Edwards, Dow Jones-Irwin, 1979, p. 475.

reflected in the financial data.⁶ Some extractor/processors reported that any gains and losses on futures and options and any charges to income based on the lower of cost or market principle, which is a GAAP, were reported in COGS, except some amounts reported by ***.⁷

Selected aggregate per-pound cost data of the extractor/processors on their operations, i.e., COGS and SG&A expenses, are presented in table VI-5. Raw material costs, especially purchased U.S. oranges, increased significantly from interim 2004 to interim 2005 which resulted in much higher cost of goods sold (COGS) and total cost (which included selling, general, and administrative (SG&A) expenses) per pound during the same periods.

A variance analysis showing the effects of prices and volume on the producers' sales of 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 (\$55.4 million) between 2002/03 and 2004/05 was attributable mainly to the negative effects of decreased price (\$102.9 million) and lower sales volume (\$1.1 million) which was offset to some extent by the positive effect of decreased costs/expenses (\$48.6 million).

In addition to the non-toll processing operations of domestic extractor/processors, there is some amount of toll processing done by two extractor/processors, ***. Based upon questionnaire responses, toll processing accounted for approximately *** percent of the total combined value of FCOJM and NFCOJ processed in 2004/05 (*** percent for FCOJM only and *** percent for NFCOJ only in 2004/05), and again, approximately *** percent of total value of FCOJM and NFCOJ processed during the January-September 2005 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 two extractor/processors (tollers) on their toll-processing operations are presented in table VI-7. Selected financial data for two tollers, by firm, are presented in table VI-8. The results are in contrast to the non-toll results contained in tables VI-1, 2, and 3. While quantity and value of the toll-processing operations decreased from 2003/04 to 2004/05 and again from interim 2004 to interim 2005, operating income changed to operating loss during the same periods, because processing cost (especially factory overhead) increased substantially for the same periods.⁸

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 2004/05 data as an example, the unit sales revenue reported by non-toll extractor/processors is \$0.94 per pound for both

⁶ When the utility of the goods in the ordinary course of business is no longer as great as their cost, a departure from the cost principle of measuring the inventory is required. Whether the cause is obsolescence, physical deterioration, changes in price levels, or any other, the difference should be recognized by a charge to income in the current period. This usually is accomplished by stating the goods as a lower level designated as market (*lower of cost or market principle*) (ARB-43, Chapter 4, Statement 5). However, another Generally Accepted Accounting Principle ("GAAP"), Financial Accounting Standard (FAS-133, *Accounting for Derivative Instruments and Hedging Activities*) states that if inventory has been the hedged item in a fair value hedge, the inventory's cost basis used in determining the lower-of-cost-or-market shall include the effects of adjusting its carrying amount as a result of recording the gain or loss on the hedged item.

⁷ Some extractor/processors reported other income (expenses) in response to the Commission's follow-up question, based on the assumption of what gains or losses would be if they were to value closing inventory at its actual market value. Since these gains/losses were not actually recorded or recognized by them and not based on GAAP, they are not reflected in the financial data.

⁸ ***.

Table VI-5**Certain orange juice: Per-pound costs of non-toll U.S. extractor/processors on FCOJM and NFCOJ, fiscal years 2002/03-2004/05, January-September 2004, and January-September 2005**

Item	Fiscal year			January-September	
	2002/03	2003/04	2004/05	2004	2005
COGS:	<i>Value (per pound)</i>				
U.S. fresh oranges	\$0.56	\$0.62	\$0.58	\$0.53	\$0.56
Purchased U.S. oranges	0.22	0.12	0.13	0.12	0.25
Brazilian orange solids	0.04	0.05	0.05	0.03	0.03
Other imported oranges	0.00	0.00	0.00	0.00	0.00
Others and net by-product revenues ¹	0.00	(0.03)	(0.04)	(0.06)	(0.05)
Total raw materials	0.82	0.76	0.71	0.62	0.79
Direct labor	0.04	0.05	0.05	0.04	0.05
Factory overhead	0.11	0.13	0.14	0.15	0.13
Total COGS	0.97	0.94	0.91	0.81	0.97
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	1.02	0.98	0.95	0.85	1.01
1 ***.					
Source: Compiled from data submitted in response to Commission questionnaires.					

Table VI-6**Certain orange juice: Variance analysis of non-toll operations of U.S. extractor/processors on FCOJM and NFCOJ, fiscal years 2002/03-2004/05, January-September 2004, and January-September 2005**

* * * * *

FCOJM and NFCOJ, while the costs include the cost of the oranges or orange solids (\$0.76 per pound and \$0.71 with by-product revenues), the costs of processing (\$0.19 per pound), and selling and administrative costs (\$0.04 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).

Table VI-7

Certain orange juice: Results of extractor/processors on their toll-processing operations, fiscal years 2002/03-2004/05, January-September 2004, and January-September 2005

* * * * *

Table VI-8

Certain orange juice: Results of extractor/processors on their toll-processing operations (both FCOJM and NFCOJ), by firm, fiscal years 2002/03-2004/05, January-September 2004, and January-September 2005

* * * * *

Combined results of the U.S. extractor/processors (both toll and non-toll operations for FCOJM and NFCOJ) are presented in table VI-9.⁹ 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, respectively. 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 2002/03 to 2004/05. While the sales quantity decreased from interim 2004 to interim 2005, sales value increased during the same period, due to an increase in per-pound sales revenue (from \$0.73 to \$0.87 per pound). However, operating income decreased substantially between interim 2004 and interim 2005 because per-pound total cost increased more than an increase of per-pound selling price.

⁹ ***.

Table VI-9

Certain orange juice: Results of extractor/processors on their combined FCOJM and NFCOJ toll and non-toll processing operations, fiscal years 2002/03-2004/05, January-September 2004, and January-September 2005

Item	Fiscal year			January-September	
	2002/03	2003/04	2004/05	2004	2005
	Quantity (1,000 pounds)				
Net sales	985,014	974,988	904,488	788,034	695,528
	Value (\$1,000)				
Net sales ¹	852,040	781,909	718,707	576,104	603,777
COGS	747,441	697,622	692,845	505,022	564,675
Gross profit	104,599	84,287	25,862	71,082	39,102
SG&A expenses	33,289	32,554	34,432	25,958	24,200
Operating income (loss)	71,310	51,733	(8,570)	45,124	14,902
	Value (per pound)				
Net sales	\$0.87	\$0.80	\$0.79	\$0.73	\$0.87
COGS	0.76	0.72	0.77	0.64	0.81
Gross profit	0.11	0.09	0.03	0.09	0.06
SG&A expenses	0.03	0.03	0.04	0.03	0.03
Operating income (loss)	0.07	0.05	(0.01)	0.06	0.02
	Ratio to net sales (percent)				
COGS	87.7	89.2	96.4	87.7	93.5
Gross profit	12.3	10.8	3.6	12.3	6.5
SG&A expenses	3.9	4.2	4.8	4.5	4.0
Operating income (loss)	8.4	6.6	(1.2)	7.8	2.5
	Number of firms reporting				
Operating losses	3	5	4	4	3
Data	10	10	10	10	9
<p>¹ Internal consumption/related transfers are less than *** percent of the combined companies' net sales quantity and value in 2004/05 and are not shown separately.</p> <p>Source: Compiled from data submitted in response to Commission questionnaires.</p>					

Table VI-10

FCOJM: Results of extractor/processors on toll and non-toll operations, fiscal years 2002/03-2004/05, January-September 2004, and January-September 2005

Item	Fiscal year			January-September	
	2002/03	2003/04	2004/05	2004	2005
	Quantity (1,000 pounds)				
Net sales	795,429	806,543	683,717	657,172	517,853
	Value (\$1,000)				
Net sales ¹	670,537	631,106	526,063	461,359	449,643
COGS	603,268	578,258	520,681	413,541	427,445
Gross profit	67,269	52,848	5,382	47,818	22,198
SG&A expenses	26,469	26,185	25,839	20,773	18,026
Operating income (loss)	40,800	26,663	(20,457)	27,045	4,172
	Value (per pound)				
Net sales	\$0.84	\$0.78	\$0.77	\$0.70	\$0.87
COGS	0.76	0.72	0.76	0.63	0.83
Gross profit	0.08	0.07	0.01	0.07	0.04
SG&A expenses	0.03	0.03	0.04	0.03	0.03
Operating income (loss)	0.05	0.03	(0.03)	0.04	0.01
	Ratio to net sales (percent)				
COGS	90.0	91.6	99.0	89.6	95.1
Gross profit	10.0	8.4	1.0	10.4	4.9
SG&A expenses	3.9	4.1	4.9	4.5	4.0
Operating income (loss)	6.1	4.2	(3.9)	5.9	0.9
	Number of firms reporting				
Operating losses	5	5	6	4	5
Data	10	10	10	10	9
<p>¹ Internal consumption/related transfers are less than *** percent of the combined companies' net sales quantity and value in 2004/05 and are not shown separately.</p> <p>Source: Compiled from data submitted in response to Commission questionnaires.</p>					

Table VI-11

NFCOJ: Results of extractor/processors on toll and non-toll operations, fiscal years 2002/03-2004/05, January-September 2004, and January-September 2005

Item	Fiscal year			January-September	
	2002/03	2003/04	2004/05	2004	2005
	Quantity (1,000 pounds)				
Net sales	189,585	168,445	220,771	130,862	177,675
	Value (\$1,000)				
Net sales ¹	181,503	150,803	192,644	114,745	154,134
COGS	144,173	119,364	172,164	91,481	137,230
Gross profit	37,330	31,439	20,480	23,264	16,904
SG&A expenses	6,820	6,369	8,593	5,185	6,174
Operating income	30,510	25,070	11,887	18,079	10,730
	Value (per pound)				
Net sales	\$0.96	\$0.90	\$0.87	\$0.88	\$0.87
COGS	0.76	0.71	0.78	0.70	0.77
Gross profit	0.20	0.19	0.09	0.18	0.10
SG&A expenses	0.04	0.04	0.04	0.04	0.03
Operating income	0.16	0.15	0.05	0.14	0.06
	Ratio to net sales (percent)				
COGS	79.4	79.2	89.4	79.7	89.0
Gross profit	20.6	20.8	10.6	20.3	11.0
SG&A expenses	3.8	4.2	4.5	4.5	4.0
Operating income	16.8	16.6	6.2	15.8	7.0
	Number of firms reporting				
Operating losses	***	***	***	***	***
Data	6	6	7	6	7
¹ No internal consumption/related transfers were reported in all periods. Source: Compiled from data submitted in response to Commission questionnaires.					

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 large capital expenditures during the period for which data were collected. *** reported R&D expenses. Capital expenditures, by firm, are presented in table VI-13. Capital expenditures decreased substantially in 2003/04 compared to 2002/03 and then increased slightly in 2004/05. R&D expenses decreased from 2002/03 to 2003/04 and increased in 2004/05. Capital expenditures and R&D expenses both increased from interim 2004 to interim 2005.

Table VI-12

Certain orange juice: Capital expenditures and R&D expenses by U.S. extractor/processors on FCOJM and NFCOJ, fiscal years 2002/03-2004/05, January-September 2004, and January-September 2005

Item	Fiscal year			January-September	
	2002/03	2003/04	2004/05	2004	2005
	Value (\$1,000)				
Capital expenditures: ¹					
FCOJM	22,540	8,727	12,177	8,797	13,565
NFCOJ	25,267	3,290	875	2,665	821
Total	47,807	12,017	13,052	11,462	14,386
R&D expenses: ²					
FCOJM	***	***	***	***	***
NFCOJ	***	***	***	***	***
Total	***	***	***	***	***
¹ All companies *** 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 products and firms, fiscal years 2002/03-2004/05, January-September 2004, and January-September 2005

* * * * *

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. Therefore, staff calculated ROI 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 decreased steadily from 2002/03 to 2004/05. The return on investment decreased over the same period since operating income decreased continuously during the same period. 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.

Table VI-14**Certain orange juice: Value of assets and return on investment of U.S. extractor/processors, fiscal years 2002/03-2004/05**

Item	Fiscal year		
	2002/03	2003/04	2004/05
Value of assets:	Value (\$1,000)		
1. Current assets:			
A. Cash and equivalents	6,955	10,514	3,772
B. Trade receivables (net)	86,904	92,075	85,540
C. Inventories	426,036	393,788	364,660
D. All other current	16,304	27,933	19,390
Total current	536,199	524,310	473,362
2. Non-current assets:			
A. Productive facilities ¹	728,012	749,522	758,882
B. Productive facilities (net) ²	429,690	418,632	396,009
C. Other non-current	8,044	12,757	12,887
Total non-current	437,734	431,389	408,896
Total assets	973,933	955,699	882,258
	Value (\$1,000)		
Operating income (loss)	49,559	22,445	(5,837)
	Ratio of operating income to total assets (percent)		
Return on investment	5.1	2.3	(0.7)
¹ Original cost of property, plant, and equipment (PPE).			
² Net book value of PPE (original cost less accumulated depreciation).			
Source: Compiled from data submitted in response to Commission questionnaires.			

CAPITAL AND INVESTMENT

The Commission requested U.S. extractor/processors to describe any actual negative effects on their return on investment, or their growth, investment, ability to raise capital, existing development and production efforts, or the scale of capital investments as a result of imports of certain orange juice from Brazil. The extractor/processors' comments are presented in appendix E.

OPERATIONS ON CERTAIN ORANGE GROWERS

Results of operations of *** U.S. orange growers, accounting for approximately 12 percent of U.S. production of oranges, are presented in table VI-15.¹⁰ Due to the extremely small number of responses by U.S. growers compared to over 11,000 domestic growers, the financial results of *** growers may well not represent a true picture of the operational results of all U.S. growers.¹¹ Furthermore, only nine growers provided their interim financial data since profit and loss statements are usually prepared on annual basis, either as crop year or fiscal year. Therefore, interim financial data are not being presented in this section. Sales quantity and value both fluctuated from 2002/03 to 2004/05, while operating income decreased continuously during the same period. The average unit selling price per box decreased from 2002/03 to 2003/04 and increased from 2003/04 to 2004/05, while the average unit growing and operating expenses followed the same trend, but increased much more than the increase in per-unit selling price, which resulted in a much lower operating income in 2004/05.¹²

GROWERS' CAPITAL EXPENDITURES AND RESEARCH AND DEVELOPMENT EXPENSES

The responding growers' aggregate data on capital expenditures and research and development expenses are shown in table VI-17. Capital expenditures decreased continuously from 2002/03 to 2004/05 while R&D expenses which were reported by *** increased slightly over the same period.

¹⁰ Although a total *** growers submitted questionnaire responses, *** responses either contained no financial data or were significantly incomplete and could not be utilized.

¹¹ All reported growers are non-organic growers. Therefore, no separate analysis for non-organic and organic is required.

¹² Petitioners have argued in their posthearing brief that the revenue and cost data provided by the growers (presented in table VI-15) likely under reports costs and are therefore not reliable. Petitioner's post hearing brief at 50-53 (answer to Vice Chairman Okun's questions). Petitioner encourages the Commission to instead rely upon publicly available data. Id. In particular, petitioner refers to a projected 2004-05 orange grower cost budget prepared an economist at the University of Florida ("Muraro budget"). Petitioner's post-hearing brief at 52-53 (fn 86, 89, and 95) and attachment 12. While the Muraro budget is useful in some respects, it is limited because it is only an estimate of grower costs for 2004/2005. As such, it does not include much of the information contained in the Commission's grower questionnaires, such as information for periods other than the 2004/2005 growing season, revenue data, income or loss data, asset data, and capital expenditure data. Notwithstanding the foregoing, the staff notes the cost data provided by the growers is actually quite consistent with the cost data in the Muraro budget; in fact, it is actually a bit higher on a unit basis. Specifically, once the Muraro budget data is adjusted by removing imputed interest costs, the cost per box is \$5.03, while data submitted by the growers (and presented in table VI-15) indicates the cost per box is ***. Thus, the difference is less than 6 percent. See January 26, 2006 memo from John Ascienzo to file.

Table VI-15

Certain orange juice: Results of operations of U.S. growers, fiscal years 2002/03-2004/05

Item	Fiscal year		
	2002/03	2003/04	2004/05
	Quantity (1,000 boxes)		
Net sales	33,607	36,883	31,162
	Value (\$1,000)		
Net sales	190,683	193,154	169,959
Growing/Op. expenses:			
Hired labor	12,458	15,342	12,406
Pick & haul	62,449	64,872	58,724
Replanting, pruning	2,600	1,933	2,112
Planting on new land	0	21	0
Fertilizers, chemicals	14,282	13,393	11,923
Materials, supplies	425	376	403
Repairs, maintenance	2,446	2,356	2,171
Gasoline, fuel	1,937	1,922	2,216
Water, electricity	1,471	1,336	1,390
Selling, marketing expenses	72	78	68
Shipping expenses	1	1	1
Officer/partner salaries	3,290	3,353	3,352
Office expenses, other salar.	1,402	1,440	1,403
Depreciation/amortization	12,288	10,768	10,926
All other expenses	62,900	63,140	58,932
Total expenses	178,021	180,331	166,027
Operating income	12,662	12,823	3,932
Interest expense	1,015	816	559
Other expense	10,948	2,123	2,897
Other income	5,119	5,899	8,079
Net income	5,818	15,783	8,555
Net gain on futures	0	1,501	846
	Value (per box)		
Net sales	\$5.67	\$5.24	\$5.45
Growing/Op. expenses	5.30	4.89	5.33
Operating income	0.38	0.35	0.13
Net income	0.17	0.43	0.27
	Ratio to net sales (percent)		
Growing/Op. expenses	93.4	93.4	97.7
Operating income	6.6	6.6	2.3
Net income	3.1	8.2	5.0
	Number of firms reporting		
Operating losses	6	9	10
Net losses	7	8	8
Data	21	21	21

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

Only nine growers reported sources of other income; this information is presented in table VI-16.

Table VI-16

Certain orange juice: Sources of other income of U.S. growers, fiscal years 2002/03-2004/05

* * * * *

Table VI-17

Certain orange juice: Capital expenditures and R&D expenses by U.S. growers, fiscal years 2002/03-2004/05

Item	Fiscal year		
	2002/03	2003/04	2004/05
	Value (\$1,000)		
Capital expenditures ¹	15,680	11,020	6,621
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. However, more small growers are abandoning production and larger sized, better capitalized farmers and extractor/processors are investing in new groves.³ Approximately 20 percent of Brazil's orange growers produce 80 percent of the total orange production.⁴ The state of Sao Paulo accounts for 98 percent of Brazil's orange juice production with 11 processing plants.⁵ Publicly available data on the Brazilian orange and orange juice industry are presented in table VII-1.

Area planted increased 11.7 percent from 2001/02 to 2004/05.⁶ In the 2004/05 growing season, Brazil had an estimated 211 million bearing orange trees and 49 million non-bearing trees. Large plantings of trees have occurred in the southern part of the citrus belt (Avare and Botucatu), some of

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 2005", USDA Foreign Agricultural Service GAIN Report, December 20, 2005, p. 6.

⁴ "Brazil Citrus Annual 2003", USDA Foreign Agricultural Service GAIN Report, December 17, 2003, p. 10.

⁵ Abecitrus', The Brazilian Association of Citrus Exporters, website. Retrieved at www.arabbrazil.com/orange.htm.

⁶ Brazil reportedly 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, Brazilian stocks, production, exports, and domestic consumption, crop years 2001/02 to 2004/05, and projected 2005/06

Item	Brazilian crop year (July-June)				
	2001/02	2002/03	2003/04	2004/05	Projected 2005/06
Area planted (1,000 acres)	1,917	1,959	2,035	2,141	2,103
Area harvested (1,000 acres)	1,791	1,797	1,799	1,806	1,830
Bearing trees (millions)	209	210	210	211	214
Non-bearing trees (millions)	19	24	34	49	41
Oranges produced (million 90-pound boxes)	361	450	377	467	406
Oranges processed into FCOJM quantity (million 90-pound boxes)	227	315	243	318	261
Oranges processed into NFCOJ quantity (million 90-pound boxes)	6	14	14	18	21
Quantity (million SSE gallons)					
FCOJM:					
Beginning stocks ¹	370	212	337	79	142
Total production	1,375	1,904	1,618	2,084	1,807
Total supply	1,745	2,116	1,956	2,162	1,949
Exports	1,511	1,757	1,852	1,992	1,877
Domestic consumption	21	21	25	28	28
Ending stocks	212	337	79	142	44
NFCOJ:²					
Exports	6	51	83	101	112
<p>¹ Sao Paulo stocks. ² There is no official estimate for NFCOJ supply and demand in Brazil. Almost all NFCOJ production is exported.</p> <p>Note: One hectare = 2,471 acres, 40.8 kg box = 90 pound box, FCOJ metric tons at 65 Brix and NFC metric tons export (which were presented in FCOJ Brix equivalents) were converted to SSE gallons by a conversion factor of 1,405.88.</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; "Brazil Citrus Semi Annual 2005", USDA Foreign Agricultural Service GAIN Report, June 22, 2005, "Brazil Citrus Annual 2005", USDA Foreign Agricultural Service GAIN Report, December 20, 2005.</p>					

them to replace trees affected by disease in the north.⁷ ⁸ 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.⁹ As a result, many growers are reportedly 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,¹⁰ the use of more efficient planting densities (380-400 trees/ha), and increased use of irrigation.¹¹

There is very little domestic demand for commercially processed orange juice in Brazil,¹² 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 in the United States, and could be used for the production of orange juice.¹³ In 2004/05, Brazil accounted for approximately 57 percent of the world's production of orange juice, and exported 92 percent of its production.¹⁴ During the period of investigation, Brazil's exports of certain orange juice represented approximately 84 percent of world orange juice exports.¹⁵ Data on other major markets for Brazilian exports are listed in table VII-2. Brazilian processors have worldwide inventories of FCOJM.¹⁶ Brazil's 2004/05 worldwide ending inventories of FCOJM are estimated at 534.2 million gallons SSE.¹⁷

Four Brazilian producers of certain orange juice provided responses to the Commission's request for information.¹⁸ The firms that responded are Coinbra,¹⁹ Cutrale,²⁰ Fischer/Citrosuco,²¹ and Montecitrus Group ("Montecitrus").²² These four firms accounted for approximately *** percent of

⁷ "Brazil Citrus Semi Annual 2004", USDA Foreign Agricultural Service GAIN Report, p. 5, June 21, 2004.

⁸ 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.

⁹ "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.

¹⁰ "Brazil Citrus Annual 2003", USDA Foreign Agricultural Service GAIN Report, p. 4, December 17, 2003.

¹¹ 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.

¹² 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.

¹³ Petitioners' prehearing brief, p. 74.

¹⁴ "PS&D Online," FAS, USDA, Nov. 2005.

¹⁵ "PS&D Online," FAS, USDA, Nov. 2005.

¹⁶ Brazil has storage tank farms in Brazil, Florida, the U.S. Northeast, and the EU. Petitioners' prehearing brief, p. 74.

¹⁷ "Brazil Citrus Annual 2005", USDA Foreign Agricultural Service GAIN Report, pp. 15, December 20, 2005.

¹⁸ In addition, one Brazilian extractor/processor of nonsubject FCOJM, Citrovita, provided a questionnaire response.

¹⁹ ***.

²⁰ ***.

²¹ ***.

²² ***.

Table VII-2
Certain orange juice: Export markets for product from Brazil, crop years 2001/02-2004/05

Export market	Crop year			
	2001/02	2002/03	2003/04	2004/05
Quantity (thousand gallons SSE)				
FCOJM:¹				
Belgium ²	526,478	562,640	523,079	680,826
Netherlands	492,201	267,695	270,763	232,177
USA	178,271	307,955	203,761	278,772
Japan	103,059	104,270	88,653	113,608
Australia	25,205	35,482	16,050	31,001
China	14,579	20,235	43,792	50,125
South Korea	47,224	44,578	28,759	34,251
Switzerland	10,749	10,068	23,728	10,097
Israel	(³)	5,706	10,883	12,055
Puerto Rico	13,674	13,159	9,978	17,444
Others	41,715	32,477	28,642	53,695
TOTAL	1,453,156	1,404,265	1,248,087	1,514,051
NFCOJ:⁴				
Belgium ²	(³)	36,083	42,743	48,111
USA	(³)	11,408	19,121	21,982
Netherlands	(³)	6,298	10,513	29,313
Australia	(³)	(³)	133	1,216
Germany	(³)	(³)	(³)	258
New Zealand	(³)	(³)	5	204
Chile	(³)	86	85	106
Israel	(³)	(³)	(³)	43
Angola	(³)	2	5	20
Japan	(³)	(³)	5	(³)
Others	(³)	12	267	48
TOTAL	(³)	53,890	72,877	101,300
<p>¹ HTS 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 Not available. ⁴ HTS 2009.12.00, the HTS category 2009.12.00 was added January 1, 2002.</p> <p>Note: Crop year is from July to June. FCOJ metric tons at 65 Brix and NFC metric tons (which were presented in FCOJ Brix equivalents) were converted to SSE gallons by a conversion factor of 1,405.88.</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; "Brazil Citrus Semi Annual 2005", USDA Foreign Agricultural Service GAIN Report, June 22, 2005; "Brazil Citrus Annual 2005", USDA Foreign Agricultural Service GAIN Report, December 20, 2005.</p>				

Brazilian production of certain orange juice in 2004/05.²³ 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 Fischer/Citrosuco and Cutrale. Fischer/Citrosuco purchased Cargill Brazil's processing plant located in Bebedouro, which added an estimated *** pounds solids to Fischer/Citrosuco's FCOJ capacity. Cutrale acquired Cargill Brazil's Ucoa plant, which increased its capacity by ***. In addition, ***. Table VII-3 presents responding firms' production of other products on equipment and machinery used in the production of certain orange juice, shares 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 for 2004/05. 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 Citrovita, a nonsubject producer, of certain orange juice in Brazil.

Table VII-3
Certain orange juice: Brazilian producers, other products produced on the same equipment and machinery, shares of total production on the same equipment, and share of firms' total sales, crop year 2004/05

* * * * *

Table VII-4
Certain orange juice: Brazilian production capacity, production, shipments, and inventories of FCOJM (subject) and NFCOJ, 2001/02-2004/05, July-September 2004, July-September 2005, and projected 2005/06-2006/07

* * * * *

Table VII-5
FCOJM (subject): Brazilian production capacity, production, shipments, and inventories, 2001/02-2004/05, July-September 2004, July-September 2005, and projected 2005/06-2006/07

* * * * *

Table VII-6
NFCOJ: Brazilian production capacity, production, shipments, and inventories, 2001/02-2004/05, July-September 2004, July-September 2005, and projected 2005/06-2006/07

* * * * *

Table VII-7
FCOJM (nonsubject): Citrovita production capacity, production, shipments, and inventories, 2001/02-2004/05, July-September 2004, July-September 2005, and projected 2005/06-2006/07

* * * * *

²³ The Commission e-mailed the foreign producer questionnaire to counsel representing Brazilian producers. The Commission also posted the foreign producer questionnaire on its web site.

*** was the only Brazilian producer of subject orange juice to report inventories in a third country. These inventories were *** pounds solids equivalent in 2001/02, *** million in 2002/03, *** million in 2003/04, *** million in 2004/05, *** million in September 2004, and *** million in September 2005.²⁴

Brazilian exporters, as well as exporters in the United States, face a variety of tariff and non-tariff barriers for FCOJM in third-country markets.²⁵ In addition to U.S. tariffs of 29.72 cents per SSE gallon, exporters of FCOJM to the United States are subject to the Florida equalization tax.²⁶

U.S. IMPORTERS' INVENTORIES

Six importers reported inventories of imports of FCOJM from Brazil during the period of investigation.²⁷ Data collected in this investigation on U.S. importers' end-of-period inventories of certain orange juice are presented in table VII-8. Inventories of subject imports increased in 2002/03, fell in 2003/04, then increased in 2004/05. The ratio of inventories to imports and the ratio of inventories to U.S. shipments fluctuated throughout the period of investigation. The ratio of inventories to imports fell from 27.6 percent in 2001/02 to 21.7 percent in 2004/05.

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

Four firms reported imports or arrangements for the importation of certain orange juice after September 30, 2005: ***.

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.

²⁴ In 2004, Fischer/Citrosuco launched three new tanker ships with the ability to carry over 8 million gallons of NFC in one voyage. These ships can make 12 such voyages as year, which translates to 96 million gallons per year. Petitioners' prehearing brief, p. 76.

²⁵ Tariff rates on orange juice vary considerably, but tend to be high among some of the important importing countries. Most countries have the same rates for FCOJ as for NFC. Bound rates in Australia are bound at 24 percent AVE. Canadian bound rates are free on FCOJ and 1.92 percent for NFC. EU bound rates for FCOJ are 33.6 percent AVE, and 15.2 percent AVE for NFC. Bound rates for Korea are 54 percent AVE. New Zealand rates are bound at 10 percent AVE.

²⁶ 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 (FDC) 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.

²⁷ Those firms were ***.

Table VII-8
Certain orange juice: U.S. importers' end-of-period inventories of imports, crop years 2001/02-2004/05¹

Item	Crop year			
	2001/02	2002/03	2003/04	2004/05
	Inventories (1,000 pounds solids)			
FCOJM	34,771	43,007	27,405	52,800
	Ratio to imports (percent)			
FCOJM	27.6	17.2	18.1	21.7
	Ratio to U.S. shipments (percent)			
FCOJM	25.6	18.8	18.1	25.0
¹ Six firms reported inventories of FCOJM from Brazil. Note: Pounds solids are converted to gallons SSE by a factor of 1.029. Source: Compiled from data submitted in response to Commission questionnaires.				

APPENDIX A
***FEDERAL REGISTER* NOTICES**

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-351-840]

Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Critical Circumstances Determination: Certain Orange Juice from Brazil

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

SUMMARY: We preliminarily determine that certain orange juice from Brazil is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). In addition, we preliminarily determine that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to the subject merchandise exported from Brazil.

Interested parties are invited to comment on this preliminary determination. Because we are postponing the final determination, we will make our final determination not later than 135 days after the date of publication of this preliminary determination in the **Federal Register**.

EFFECTIVE DATE: August 24, 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, respectively.

SUPPLEMENTARY INFORMATION:**Preliminary Determination**

We preliminarily determine that certain orange juice from Brazil is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice. In addition, we preliminarily determine that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to the subject merchandise exported from Brazil. The critical circumstances analysis for the preliminary determination is discussed below under the section "Critical Circumstances."

Background

Since the initiation of this investigation (see *Notice of Initiation of*

Antidumping Duty Investigation: Certain Orange Juice from Brazil, 70 FR 7233 (Feb. 11, 2005) (*Initiation Notice*)), the following events have occurred.

On March 3, 2005, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of certain orange juice from Brazil are materially injuring the United States industry. See ITC Investigation No. 731-TA-1089.

On March 7, 2005, we selected Sucocitrico Cutrale, S.A. (Cutrale), the largest producer/exporter of certain orange juice from Brazil, as a mandatory respondent in this proceeding and issued Cutrale an antidumping questionnaire.

On March 14, 2005, we also selected the two next largest producers/exporters of certain orange juice from Brazil (*i.e.*, Fischer S/A - Agroindustria (Fischer) and Montecitrus Industria e Comercio Limitada (Montecitrus)) as mandatory respondents in this proceeding. See the March 14, 2005, memorandum to Louis Apple, Director, Office 2, from Elizabeth Eastwood, Jill Pollack, Nichole Zink, and Ryan Douglas entitled, "Antidumping Duty Investigation of Certain Orange Juice from Brazil - Selection of Respondents." We issued antidumping questionnaires to these exporters on March 14, 2005.

On March 31, 2005, the petitioners¹ requested that the Department "clarify" the scope of the instant investigation to include exports of FCOJM from producers and exporters previously covered by a separate antidumping duty order on frozen concentrated orange juice (FCOJ) from Brazil. From April 4 through April 14, 2005, we received comments on the petitioners' request from various Brazilian orange juice producers, as well as additional comments from the petitioners.

On April 11, 2005, Cutrale requested that the Department revise the period of investigation (POI) in this proceeding.

We received section A questionnaire responses from Cutrale and Fischer on April 11, 2005. On April 15 and 18, 2005, respectively, the Department issued supplemental section A questionnaires to Fischer and Cutrale. On April 19, 2005, we received a section A questionnaire response from Montecitrus.

On April 22, 2005, we rejected Cutrale's request to revise the POI. See the April 22, 2005, memorandum to Louis Apple, Director, Office 2, from Jill

¹ The petitioners in this investigation are the Florida Citrus Mutual, A. Duda & Sons, Inc. (doing business as Citrus Belle), Citrus World, Inc., and Southern Garden Citrus Processing Corporation (doing business as Southern Gardens).

Pollack, Analyst, entitled, "Request by Sucocitrico Cutrale Ltda. for a Revised Period of Investigation in the Antidumping Duty Investigation of Certain Orange Juice from Brazil."

We received section B and C questionnaire responses from Cutrale and Fischer on April 27, and 29, 2005, respectively.

On May 5 and 6, 2005, respectively, we issued a second supplemental section A questionnaire to Cutrale, and a supplemental questionnaire regarding sections B and C to Fischer.

On May 6, 2005, Cutrale and Fischer submitted responses to the Department's first supplemental section A questionnaires.

On May 9, 2005, Montecitrus withdrew its participation from this antidumping proceeding and requested that the Department remove from the record of this proceeding all documents containing business proprietary information submitted by or on behalf of Montecitrus. On May 26, 2005, we certified to the destruction of all business proprietary information.

On May 11 and 16, 2005, respectively, the petitioners alleged that Cutrale and Fischer made home market sales below the cost of production (COP) and, therefore, requested that the Department initiate a sales-below-cost investigation of these respondents.

On May 12, 2005, Cutrale submitted its response to the Department's second supplemental section A questionnaire.

On May 23 and 31, 2005, respectively, we initiated sales-below-cost investigations for Cutrale and Fischer and, as a result, requested that Cutrale and Fischer respond to section D of the questionnaire. See the May 23, 2005, memorandum to Louis Apple, Director, Office 2, from Nichole Zink, Analyst, entitled, "Petitioners' Allegation of Sales Below the Cost of Production for Sucocitrico Cutrale Ltda." (Cutrale Cost Initiation Memo) and May 31, 2005, memorandum to Louis Apple, Director, Office 2, from Elizabeth Eastwood, Senior Analyst, entitled, "Petitioners' Allegation of Sales Below the Cost of Production for Fischer S/A-Agroindustria" (Fischer Cost Initiation Memo).

On May 27, 2005, we issued a second supplemental section A questionnaire to Fischer.

On June 2, 2005, the petitioners made a timely request pursuant to 19 CFR 351.205(e) for a 50-day postponement of the preliminary determination, pursuant to section 733(c)(1)(A) of the Act. The petitioners stated that a postponement of the preliminary determination was necessary in order to permit the Department and the petitioners to fully

analyze the information that had been submitted in the investigation and to analyze cost information.

On June 7 and 9, 2005, respectively, we issued a supplemental questionnaire regarding sections B and C to Cutrale and a supplemental questionnaire regarding section B to Fischer.

On June 10, 2005, Fischer submitted its response to the Department's second supplemental section A questionnaire.

On June 7, 2005, pursuant to sections 733(c)(1)(A) and (b)(1) of the Act and 19 CFR 351.205(f), the Department postponed the preliminary determination until no later than August 16, 2005. See *Postponement of Preliminary Determination of Antidumping Duty Investigation: Certain Orange Juice from Brazil*, 70 FR 34086 (June 13, 2005).

On June 21, 2005, Cutrale submitted its response to the Department's section D questionnaire.

On June 24, 2005, we issued a supplemental section C questionnaire to Fischer.

On June 27, 2005, we informed the petitioners that in order for the Department to consider revising the scope of this proceeding, they would need to amend the original petition. For further discussion, see the "Scope Comments" section of this notice below.

On June 28, 2005, Fischer submitted its response to the Department's section D questionnaire.

On June 29, 2005, the Department issued its third supplemental section A questionnaire to Fischer.

On July 1, 2005, Fischer responded to the Department's supplemental section B questionnaire. On July 5, 2005, Cutrale responded to the Department's supplemental sections B and C questionnaire.

On July 13, 2005, Fischer submitted its response to the Department's third supplemental section A questionnaire.

On July 14, 2005, we issued a supplemental section D questionnaire to Fischer.

On July 22, 2005, Fischer submitted its response to the Department's supplemental section C questionnaire.

On July 25, 2005, the petitioners alleged that critical circumstances exist with respect to imports of certain orange juice from Brazil. Accordingly, pursuant to section 732(e) of the Act, on July 28, 2005, we requested information from Cutrale and Fischer regarding monthly shipments to the United States during the period June 2001 through June 2005.

On July 26, 2005, and August 4, 2005, respectively, Cutrale and Fischer submitted their responses to the Department's supplemental section D questionnaires.

On August 1 and 2, 2005, respectively, Cutrale and Fischer requested that the Department postpone its final determination in the event of an affirmative preliminary determination, in accordance with section 735(a)(2) of the Act.

On August 3, 2005, we issued a second supplemental questionnaire regarding sections B and C to Cutrale. On August 10, 2005, we issued additional supplemental questionnaires to both respondents. Because the deadline for this information is after the date of the preliminary determination, we will consider it for the final determination.

On August 11, 2005, we received monthly shipment information from Cutrale and Fischer. Because this information was received too late for use in the preliminary determination, we will consider it in the final determination. The critical circumstances analysis for the preliminary determination is discussed below under "Critical Circumstances."

Postponement of Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

Pursuant to section 735(a)(2) of the Act, on August 1 and August 2, 2005, respectively, Cutrale and Fischer requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register**, and extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) Cutrale and Fischer account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondents' request and are

postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Period of Investigation

The POI is October 1, 2003, through September 30, 2004. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, December 2004).

Scope of Investigation

The scope of this investigation includes certain orange juice for transport and/or further manufacturing, produced in two different forms: (1) frozen orange juice in a highly concentrated form, sometimes referred to as FCOJM; and (2) pasteurized single-strength orange juice which has not been concentrated, referred to as NFC.

At the time of the filing of the petition, there was an existing antidumping duty order on FCOJ from Brazil. See *Antidumping Duty Order; Frozen Concentrated Orange Juice from Brazil*, 52 FR 16426 (May 5, 1987). Therefore, the scope of this investigation with regard to FCOJM covers only FCOJM produced and/or exported by those companies which were excluded or revoked from the pre-existing antidumping order on FCOJ from Brazil as of December 27, 2004. Those companies are Cargill Citrus Limitada, Cutrale, Fischer², and Montecitrus.

The Department also revoked the pre-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). After revocation, both of these companies experienced changes in their corporate organization and are now doing business under the name COINBRA-Frutesp. Therefore, in order to determine whether these companies are subject to this proceeding, the Department must make successor-in-interest findings with respect to each

entity. We intend to make such findings no later than the final determination in this case. We note that, should the Department find COINBRA-Frutesp to be the successor-in-interest to one or both of these companies, exports of FCOJM by the successor company will be included in this proceeding. See the "Successor-in-Interest" section of this notice, below, for further discussion.

Excluded from the scope of the investigation are reconstituted orange juice and frozen concentrated orange juice for retail (FCOJR). Reconstituted orange juice is produced through further manufacture of FCOJM, by adding water, oils and essences to the orange juice concentrate. FCOJR is concentrated orange juice, typically at 42° Brix, in a frozen state, packed in retail-sized containers ready for sale to consumers. FCOJR, a finished consumer product, is produced through further manufacture of FCOJM, a bulk manufacturer's product.

The subject merchandise is currently classifiable under subheadings 2009.11.00, 2009.12.25, 2009.12.45, and 2009.19.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive. Rather the written description of the scope of this investigation is dispositive.

Successor-in-Interest

As noted above, at the time of the filing of the petition, there was an existing antidumping duty order on FCOJ from Brazil. Therefore, the scope with regard to FCOJM covers only FCOJM produced and/or exported by those companies which were excluded or revoked from the pre-existing antidumping order on FCOJ from Brazil as of December 27, 2004. Three of the revoked companies, Citrosuco, Frutesp, and Frutropic, informed the Department that they have undergone certain ownership changes since the time of their revocation and are now doing business under different names. In our notice of initiation, we indicated that we intended to make successor-in-interest determinations with respect to these companies in order to determine if the FCOJM exports of the "new" companies fall within the scope of this proceeding.

Regarding Citrosuco, prior to the initiation of this investigation, Citrosuco informed the Department that it is now doing business under the name Fischer, and it claimed that Fischer is the successor-in-interest to Citrosuco. On March 8, 2005, we issued a separate questionnaire to Fischer relating to the successor-in-interest issue. On April 11,

2005, Fischer submitted its response. Based on our analysis of this submission, we find that the company's organizational structure, management, production facilities, supplier relationships, and customers have remained essentially unchanged. Furthermore, Fischer has provided sufficient documentation of its name change. Based on all the evidence reviewed, we find that Fischer operates as the same business entity as Citrosuco. Thus, we find that Fischer is the successor-in-interest to Citrosuco and, as a consequence, its exports of FCOJM are subject to this proceeding. For further discussion, see the August 16, 2005, memorandum to Joseph A. Spetrini, Acting Assistant Secretary, from Barbara E. Tillman, Acting Deputy Assistant Secretary, entitled, "Successor-In-Interest Determination for Fischer S.A. Agroindustria in the Less-Than-Fair-Value Investigation on Certain Orange Juice from Brazil."

Regarding Frutesp and Frutropic, these entities were purchased by the Louis Dreyfus group in the early 1990's and they are now producing and exporting FCOJM under the name COINBRA-Frutesp. Because the corporate structure changes for these companies are not recent and involve complex transactions, additional consideration is required to determine their successor-in-interest status. Accordingly, we intend to make our successor-in-interest findings no later than the final determination.

Scope Comments

In accordance with the preamble to our regulations, we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments no later than April 1, 2005. (See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) and *Initiation Notice* at 70 FR 7234.)

As noted in the "Background" section above, on March 31, 2005, the petitioners requested that the Department clarify the scope of the investigation to include exports of FCOJM from producers and exporters previously covered by a separate antidumping duty order on FCOJ from Brazil. We received additional comments from the following interested parties on this issue: Citrovita Agro Industrial Ltda. (Citrovita), COINBRA-Frutesp, Cutrale, Louis Dreyfus Citrus, Inc., and Montecitrus. On June 27, 2005, we notified the petitioners that in order for the Department to consider revising the scope of the instant investigation as requested, the petitioners would need to

² At the time of this company's revocation, this company was doing business under the name Citrosuco Paulista S.A. (Citrosuco). See the "Successor-in-Interest" section of this notice, below, for further discussion.

amend the original petition. Because the petitioners have not submitted such an amendment, we have continued to define the scope of this investigation as initiated.

On April 1, 2005, Cutrale agreed with the Department's initial treatment of FCOJM and NFC as a single class or kind of merchandise.

On May 10, 2005, U.S. Customs and Border Protection (CBP) raised concerns that the scope as currently drafted could encompass merchandise other than FCOJM and NFC, under the HTSUS subheadings for reconstituted juice and non-orange juice products "other" (*i.e.*, 2009.12.45 and 2009.19.00). Therefore, CBP recommended removing these HTSUS subheadings from the scope of the instant investigation. See the May 10, 2005, memorandum to the file, from Jill Pollack, Analyst, entitled: "Conversation with Customs Official Regarding the Harmonized Tariff Schedule (HTS) Codes Included in the Scope of the Antidumping Duty Investigation of Certain Orange Juice from Brazil (A-351-840)." On May 31, 2005, the petitioners opposed this request on the grounds that both of the HTSUS subheadings cover orange juice products that lack specific HTSUS numbers, but which are included in the written description of the scope. Therefore, the petitioners maintain these subheadings should be retained in order to alleviate circumvention concerns. After considering the petitioners' comments, we find that it is appropriate to continue to include the HTSUS subheadings in question in the scope description set forth above.

Use of Facts Available (FA) for Montecitrus

One of the mandatory respondents in this case, Montecitrus, notified the Department on May 9, 2005, that it no longer intended to participate in the investigation. Section 776(a)(2) of the Act provides that, if an interested party: (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination.

In the instant investigation, by withdrawing its information from the record, the Department preliminarily finds that, pursuant to section 776(a)(2)(A), Montecitrus withheld requested information. Further, pursuant to section 776(a)(2)(B), the Department preliminarily determines

Montecitrus failed to provide the information requested by the Department within the established deadlines. Finally, by withdrawing from the investigation and ceasing to participate in the proceeding, the Department preliminarily finds that, pursuant to section 776(a)(2)(C), Montecitrus significantly impeded the investigation. Consequently, pursuant to sections 776(a)(2)(A)-(C) of the Act, the Department preliminarily finds that the application of facts available is warranted.

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information. See, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (Aug. 30, 2002). To examine whether the respondent cooperated by acting to the best of its ability under section 776(b) of the Act, the Department considers, *inter alia*, the accuracy and completeness of submitted information and whether the respondent has hindered the calculation of accurate dumping margins. See, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From Brazil*, 65 FR 5554, 5567 (Feb. 4, 2000). In the instant investigation, by ceasing to participate in the investigation, Montecitrus decided not to cooperate and thus did not act to the best of its ability to comply with a request for information. Consequently, we find that an adverse inference is warranted in determining an antidumping duty margin for Montecitrus.

Sections 776(b) and (c) of the Act authorize the Department to use, as adverse facts available (AFA), information derived from the petition, a final investigation determination, a previous administrative review, or any other information placed on the record. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse to induce respondents to provide the Department with complete and accurate information in a timely manner." See, *e.g.*, *Carbon and Certain Alloy Steel Wire Rod from Brazil: Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances*, 67 FR 55792 (Aug. 30, 2002); *Static Random Access*

Memory Semiconductors from Taiwan: Final Determination of Sales at Less than Fair Value, 63 FR 8909 (Feb. 23, 1998). The Department applies AFA "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See *Statement of Administrative Action* accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1, at 870 (1994) (SAA).

In accordance with our standard practice, as AFA, we are assigning Montecitrus a rate which is the higher of: (1) The highest margin stated in the notice of initiation (*i.e.*, the recalculated petition margin); or (2) the highest margin calculated for any respondent in this investigation. See, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Sweden*, 70 FR 28278 (May 17, 2005). In this case, the preliminary AFA margin is 60.29 percent, which is the highest margin stated in the notice of initiation. See *Initiation Notice*, 70 FR at 7236. We find that this rate is sufficiently high as to effectuate the purpose of the facts available rule (*i.e.*, to encourage participation in future segments of this proceeding).

Corroboration of Information

Section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, or any other information placed on the record. Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is defined as "[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." See 19 CFR 351.308 (c) and (d); see also the SAA at 870.

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. See the SAA at 870. The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

In order to determine the probative value of the margins in the petition for use as AFA for purposes of this preliminary determination, we used information submitted by the two participating respondents (*i.e.*, Cutrale and Fischer) in their questionnaire responses on the record of this investigation. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (see the February 7, 2005, Initiation Checklist). In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and constructed value (CV) calculation on which the highest margin in the petition was based.

In order to corroborate the petition's EP calculation, we compared the PIERS data for FCOJM provided by the petitioners in their February 3, 2005, petition supplement to the prices of FCOJM reported by Cutrale and Fischer. These prices are comparable to the PIERS data reported by the petitioners, thus corroborating the petition U.S. price data. In addition, the petitioners calculated a net U.S. price by deducting foreign inland freight and insurance, brokerage, handling, and port charges from the PIERS data used to derive U.S. price. We corroborated these expense amounts by comparing them to the expenses reported by Cutrale and Fischer in their questionnaire responses. In order to corroborate the petitioners' CV calculation, we compared the petitioners' CV data for FCOJM, as adjusted in the notice of initiation, to the CV data reported by the respondents for FCOJM. As discussed in the August 16, 2005, memorandum to the file from Nichole Zink, Analyst, entitled, "Corroboration of Data Contained in the Petition for Assigning Facts Available Rates" (Corroboration Memo), we find that the figure used by the petitioners is comparable to the information reported by Cutrale and Fischer, thus corroborating the petition cost data. Therefore, we preliminarily determine that the petition EP and CV information has probative value. Accordingly, we find that the highest margin stated in the notice of initiation, 60.29 percent, is corroborated within the meaning of section 776(c) of the Act. For further discussion, see the Corroboration Memo.

Fair Value Comparisons

To determine whether sales of certain orange juice from Brazil to the United States were made at LTFV, we compared the constructed export price

(CEP) to the normal value (NV), as described in the "Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average CEPs to POI weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by Cutrale and Fischer in the home market during the POI that fit the description in the "Scope of Investigation" section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: product type and organic designation. Where there were no sales of identical or similar merchandise made in the ordinary course of trade, we made product comparisons using CV.

Constructed Export Price

A. Cutrale

In accordance with section 772(b) of the Act, we calculate CEP for those sales where the merchandise was first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. In this case, we are treating all of Cutrale's U.S. sales as CEP sales because they were made in the United States by Cutrale's U.S. affiliates on behalf of Cutrale, within the meaning of section 772(b) of the Act. We excluded certain U.S. sales made pursuant to futures contracts from our analysis including: 1) sales to the New York Board of Trade (NYBOT) that have not been shipped as of the date of the preliminary determination because the country of origin of the merchandise is not yet known; and 2) sales that were destined for Canada.

For sales made pursuant to futures contracts, we are considering using as date of sale the date of the "sell" contract which resulted in the delivery of merchandise. However, although Cutrale reported the date of these "sell"

contracts in its most recent U.S. sales listing, this information was not received in time for use in the preliminary determination. For purposes of this preliminary determination, as date of sale, we used the date the futures contract was either: 1) noticed for delivery to the NYBOT, in the case of sales to the NYBOT; or 2) the date the NYBOT was notified that certain futures contracts were to be applied in an "exchange for physicals" transaction. We intend to further examine the issue of the appropriate date of sale for futures contracts for the final determination. In accordance with our practice, for all other CEP sales, we used the earlier of shipment date from the U.S. affiliate to the customer or the U.S. affiliate's invoice date as the date of sale because these were the dates on which the material terms of sale were finalized. See, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying "Issues and Decision Memorandum" at *Comment 2*.

We based CEP on the packed delivered prices to unaffiliated purchasers in the United States. For sales made pursuant to futures contracts, we adjusted the reported gross unit price (*i.e.*, the notice price) to include gains and losses incurred on the futures contract which resulted in the shipment of subject merchandise. All other gains and losses related to futures trading activities have been included in indirect selling expenses (see discussion on indirect selling expenses below). Where appropriate, we made adjustments for billing adjustments and early payment discounts.

In addition, we made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign warehousing expenses, foreign brokerage and handling expenses, ocean freight, U.S. brokerage and handling, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), U.S. inland freight expenses (*i.e.*, freight from port to warehouse), and U.S. warehousing expenses. Regarding U.S. customs duties, Cutrale reported that it received certain "drawback" amounts associated with duties paid on U.S. sales and subsequently refunded under a U.S. duty drawback program. However, because Cutrale has provided an insufficient link between the amount of U.S. duties paid and the duty drawback received, we disallowed the "drawback" amounts reported by Cutrale for the preliminary determination. We have requested

additional information from Cutrale regarding this program and will consider it in our final determination.

In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, bank charges, commissions, imputed credit expenses, and repacking), and indirect selling expenses (including inventory carrying costs, gains and losses on “rolled over” futures contracts, and other indirect selling expenses). In instances where the information reported in Cutrale’s sales listing differed from that reflected in its narrative, we relied on the narrative information. For further discussion, see the August 16, 2005, memorandum to the file, from Jill Pollack entitled, “Calculations performed for Sucocitrico Cutrale Ltda. in the Investigation of Certain Orange Juice from Brazil” (Cutrale calculation memo).

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Cutrale and its U.S. affiliates on their sales of the subject merchandise in the United States and the profit associated with those sales.

B. Fischer

In accordance with section 772(b) of the Act, we calculate CEP for those sales where the merchandise was first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. In this case, we are treating all of Fischer’s U.S. sales as CEP sales because they were made in the United States by Fischer’s U.S. affiliate on behalf of Fischer, within the meaning of section 772(b) of the Act. We preliminarily determine that invoice date is the appropriate date of sale because that is the date that the material terms of sale are agreed upon. See 19 CFR 351.401(i).

We based CEP on the packed delivered prices to unaffiliated purchasers in the United States. Where appropriate, we made adjustments for rebates. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight expenses, foreign warehousing expenses, foreign brokerage and handling expenses, ocean freight expenses, bunker fuel

surcharges, marine insurance expenses, U.S. brokerage and handling expenses, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), U.S. inland freight expenses (*i.e.*, freight from port to warehouse or to customer), and U.S. warehousing expenses. Regarding U.S. customs duties, Fischer also reported that it received certain “drawback” amounts related to U.S. sales. However, because Fischer has provided an insufficient link between the amount of U.S. duties paid and the duty drawback received, we disallowed the “drawback” amounts reported by Fischer for the preliminary determination. We have requested additional information from Fischer regarding the U.S. duty drawback program and will consider it for the final determination.

In accordance with section 772(d)(1) and (2) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, further manufacturing, imputed credit expenses, and repacking), and indirect selling expenses (including inventory carrying costs and other indirect selling expenses). We recalculated Fischer’s U.S. credit expenses using the average interest rate reported by Fischer in its July 22 response. Regarding inventory carrying costs, Fischer did not report these expenses in its U.S. sales listing. Therefore, we calculated these expenses using FA. As FA, we based Fischer’s inventory carrying period on the information contained in the public version of Cutrale’s section C response. Finally, in instances where the information reported in Fischer’s sales listing differed from that reflected in its narrative, we relied on the narrative information. For further discussion, see the August 16, 2005, memorandum to the file from Elizabeth Eastwood entitled, “Calculations performed for Fischer S/A - Agroindustria in the Investigation of Certain Orange Juice from Brazil” (Fischer calculation memo).

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Fischer and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.

Normal Value

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home

market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared each respondent’s volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

In this investigation, we determined that the aggregate volume of home market sales of the foreign like product for each respondent was sufficient to permit a proper comparison with its U.S. sales of the subject merchandise.

B. Affiliated Party Transactions and Arm’s-Length Test

As noted below, Fischer made sales of the foreign like product to affiliated customers during the POI. To test whether these sales to affiliated customers were made at arm’s length, where possible, we compared the prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, and packing. Where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade (LOT), we determined that the sales made to the affiliated party were at arm’s length. See *Modification Concerning Affiliated Party Sales in the Comparison Market*, 67 FR 69186 (Nov. 15, 2002).

C. Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as the CEP. Pursuant to 19 CFR 351.412(c)(1), the NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses (SG&A) and profit. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. See 19 CFR 351.412(c)(2). If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of

the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP–offset provision). See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (Nov. 19, 1997).

In this investigation, we obtained information from each respondent regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Company-specific LOT findings are summarized below.

Cutrale claimed that it made home market sales at only one LOT (*i.e.*, sales to original equipment manufacturers). Because Cutrale performed the same selling activities for sales to all customers in the home market (*i.e.*, engineering services, packing, inventory maintenance, processing, technical assistance, rebates, cash discounts, guarantees, freight and delivery, and post-sale warehousing), we determine that all home market sales by Cutrale were at the same LOT.

Fischer also claimed that it made home market sales at one LOT, although it reported home market sales to the following customer categories: reconstitutors and/or repackagers, institutional food service providers, and drink producers. Because Fischer performed the same selling activities for sales to all customers in the home market (*i.e.*, inventory maintenance, order processing/invoicing, freight and delivery arrangements, and receipt of payment), we also determine that all home market sales by Fischer were at the same LOT.

Both respondents made only CEP sales during the POI. In order to determine whether NV was established at an LOT which constituted a more advanced stage of distribution than the LOT of the CEP for these companies, we compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, which excludes economic activities occurring in the United States. We found that both respondents performed essentially the same selling functions in their sales offices in Brazil for both home market and U.S. sales. Therefore, the respondents' sales in Brazil were not at a more advanced stage of marketing and distribution than the constructed U.S. LOT, which represents an F.O.B. foreign port price

after the deduction of expenses associated with U.S. selling activities. Because we find that no difference in LOT exists between markets, we find that neither an LOT adjustment nor a CEP offset is warranted for either Cutrale or Fischer.

D. Cost of Production Analysis

Based on our analysis of the petitioners' allegations, we found that there were reasonable grounds to believe or suspect that Cutrale's and Fischer's sales of certain orange juice in the home market were made at prices below their respective COP.

Accordingly, pursuant to section 773(b) of the Act, we initiated sales–below-cost investigations to determine whether Cutrale's and Fischer's sales were made at prices below their respective COPs. See the Cutrale Cost Initiation Memo, and the Fischer Cost Initiation Memo.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for SG&A, and interest expenses. See "Test of Home Market Sales Prices" section below for treatment of home market selling expenses. We relied on the COP data submitted by Cutrale and Fischer except in the following instances.

A. Cutrale

1. We revised the allocation of Cutrale's net by-product revenue between FCOJM and NFC; and

2. We revised Cutrale's general and administrative (G&A) expense to include a write-off of fixed assets and a gain on the sale of fixed assets.

For further discussion of these adjustments, see the memorandums from Ji Young Oh and Laurens van Houten to Neal Halper entitled "Cost of Production and Constructed Value Adjustments for the Preliminary Determination - Sucocitrico Cutrale Ltda." dated August 16, 2005.

B. Fischer

1. We revised the per-unit reported costs for NFC and FCOJM to reflect the different brix levels between products;

2. We revised Fischer's G&A expense rate calculation to exclude packing and freight from the cost of goods sold denominator; and

3. We based the COP for one of Fischer's production facilities on AFA. As AFA, we have relied on the costs recorded in the affiliate's trial balance for the applicable months. See below for further discussion.

For further details regarding these adjustments, see the Memorandum from Heidi Schriefer and Frederick Mines to Neal M. Halper entitled "Cost of Production and Constructed Value

Calculation Adjustments for the Preliminary Determination - Fischer S/A - Agroindustria" dated August 16, 2005.

As noted above, in its original section A and D responses, Fischer stated that it owned and operated three production facilities that produced the merchandise under consideration. In the supplemental section A response, Fischer stated that one of the three facilities was actually leased from an affiliated party. Subsequently, in its supplemental section D response, Fischer stated that its previous representations were erroneous and that there were actually no leased facilities. Instead, Fischer claimed that the third facility was wholly owned and operated by its affiliate during three months of the POI and the affiliate produced the merchandise under consideration. We reviewed the record evidence and determined that: (1) These two producers are affiliated under section 771(33)(E) of the Act; and (2) Fischer and its affiliate should be treated as one entity for dumping calculation purposes under 19 CFR 351.401(f). Specifically, both entities have production facilities for similar or identical products that would not require substantial retooling of either facility to restructure manufacturing priorities and there is significant potential for the manipulation of price or production. Thus, Fischer and its affiliate should be treated as one entity for purposes of this investigation. However, as noted above, the respondent failed to provide the costs associated with the third production facility.

Section 776(a) of the Act provides that, (1) if necessary information is not available on the record, or (2) if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title. As noted above, in selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to

comply with a request for information. See, e.g., *Notice of Final Determination of Sales of Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (Aug. 30, 2002). To examine whether the respondent cooperated by acting to the best of its ability under section 776(b) of the Act, the Department considers, inter alia, the accuracy and completeness of submitted information and whether the respondent has hindered the calculation of accurate dumping margins. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From Brazil*, 65 FR 5554, 5567 (Feb. 4, 2000).

In the instant case, Fischer stated in its questionnaire response that it owned and operated three production facilities that produced the merchandise under consideration, indicating that the cost of producing merchandise under consideration for all three facilities was included in the reported costs. However, as mentioned earlier, in the supplemental questionnaire, we discovered that Fischer did not in fact operate one of the three manufacturing facilities but rather that its affiliate operated the facility. Fischer failed to provide the COP related to this facility. As a result, necessary information is not available on the record and Fischer withheld information requested by the Department, warranting the application of facts available pursuant to sections 776(a)(1) and (2)(A) of the Act. Moreover, we preliminarily determine that Fischer did not cooperate to the best of its ability in failing to provide this cost information. Based on the data Fischer was able to provide with respect to this affiliate, it is reasonable to assume that Fischer has access to this affiliate's COP data and could have provided it in response to the Department's requests. However, Fischer failed to do so. Furthermore, Fischer should have known that the affiliate's COP information was required by the Department because it was requested in the general instructions for the Department's antidumping questionnaire. Therefore, to account for the POI production costs related to the affiliate's cost of producing merchandise under consideration, we applied AFA for purposes of the preliminary determination pursuant to section 776(b) of the Act. As AFA, for the per-unit costs of the third facility, we have relied on the costs recorded in the affiliate's trial balance for the applicable months. Subsequent to this preliminary

determination, the Department will solicit further information related to the affiliate's cost of producing the merchandise under consideration.

However, if the solicited information is not provided, the Department may make additional adverse inferences related to the total reported cost of production for purposes of the final determination.

2. Test of Home Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable billing adjustments, movement charges, and direct and indirect selling expenses. In determining whether to disregard home market sales made at prices less than its COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product during the POI are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in substantial quantities. Where 20 percent or more of the respondent's sales of a given product during the POI are at prices less than the COP, we determine that the below-cost sales represent substantial quantities within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for Cutrale, less than 20 percent of Cutrale's home market sales failed the cost test. Therefore, we did not disregard any home market sales when calculating Cutrale's NV. Regarding Fischer, we found that, for certain specific products, more than 20 percent of Fischer's home market sales during the POI were at prices less than the COP and, in addition, the below-cost sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining Fischer's NV, in accordance with section 773(b)(1) of the Act. Where there

were no sales of any comparable product at prices above the COP, we used CV as the basis for determining NV.

E. Calculation of Normal Value Based on Comparison Market Prices

1. Cutrale

For Cutrale, we calculated NV based on ex-factory prices to unaffiliated customers. We made adjustments, where appropriate, to the starting price for Brazilian taxes and billing adjustments in accordance with section 773(a)(6)(B)(iii) of the Act. We made no adjustment to the starting price for home market rebates for purposes of the preliminary determination because the amounts reported were provisional. Nonetheless, we have requested further information from Cutrale regarding the payment of these rebates and will consider it for the final determination.

We made deductions from the starting price for home market credit expenses (offset by interest revenue) pursuant to section 773(a)(6)(C) of the Act. Because Cutrale reported that it had no home market borrowings during the POI, we recalculated home market credit expenses using the SELIC interest rate published by the International Monetary Fund's *International Financial Statistics* (i.e., the "SELIC" rate). Where applicable, in accordance with 19 CFR 351.410(e), we offset any commission paid on a U.S. sale by reducing the NV by the amount of home market indirect selling expenses and inventory carrying costs, up to the amount of the U.S. commission.

Finally, we deducted home market packing costs and added U.S. packing costs, where appropriate, in accordance with sections 773(a)(6)(A) and (B) of the Act.

2. Fischer

We reclassified certain of Fischer's reported sales to unaffiliated parties as sales to an affiliate because Fischer had an ownership interest in this customer during the POI.

We calculated NV based on delivered prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's length. We made adjustments, where appropriate, to the starting price for Brazilian taxes in accordance with section 773(a)(6)(B)(iii) of the Act. We deducted foreign inland freight expenses in accordance with section 773(a)(6)(B)(ii) of the Act.

In addition, we made deductions under section 773(a)(6)(C) of the Act for credit expenses (offset by interest revenue). We recalculated home market credit expenses using the "SELIC" rate because Fischer did not report home market borrowings during the POI.

Finally, we deducted home market packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act. Regarding sales packed by an affiliated party, we disallowed those packing expenses for purposes of our price-to-price comparisons because Fischer failed to demonstrate that these packing expenses were at arm's length.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Critical Circumstances

On July 25, 2005, the petitioners alleged that there is a reasonable basis to believe or suspect critical circumstances exist with respect to the antidumping investigation of certain orange juice from Brazil. In accordance with 19 CFR 351.206(c)(2)(i), because the petitioners submitted their critical circumstances allegation more than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary critical circumstances determination not later than the date of the preliminary determination.

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that an increase in imports of 15 percent during the "relatively short period" of time may be considered "massive." Section 351.206(i) of the Department's regulations defines "relatively short period" as normally being the period beginning on the date the proceeding

begins (*i.e.*, the date the petition is filed) and ending at least three months later. The regulations also provide, however, that if the Department finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.

In determining whether the above statutory criteria have been satisfied, we examined: (1) the evidence presented in the petitioners' submission of July 25; (2) information obtained from the USITC Interactive Tariff and Trade DataWeb (USITC dataweb); and (3) the ITC preliminary injury determination.

To determine whether there is a history of injurious dumping of the merchandise under investigation, in accordance with section 733(e)(1)(A)(i) of the Act, the Department normally considers evidence of an existing antidumping duty order on the subject merchandise in the United States or elsewhere to be sufficient. See *Preliminary Determination of Critical Circumstances: Steel Concrete Reinforcing Bars From Ukraine and Moldova*, 65 FR 70696 (Nov. 27, 2000). With regard to imports of certain orange juice from Brazil, the petitioners make no specific mention of a history of dumping for Brazil. We are not aware of any antidumping order in any country on certain orange juice from Brazil. For this reason, the Department does not find a history of injurious dumping of the subject merchandise from Brazil pursuant to section 733(e)(1)(A)(i) of the Act.

To determine whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales in accordance with 733(e)(1)(A)(ii) of the Act, the Department normally considers margins of 25 percent or more for EP sales, or 15 percent or more for CEP transactions, sufficient to impute knowledge of dumping. See, *e.g.*, *Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 31972, 31978 (Oct. 19, 2001). Each respondent reported only CEP sales. The preliminary dumping margins calculated for Cutrale and Fischer are greater than 15 percent. Based on the ITC's preliminary determination of material injury, and the preliminary dumping margins calculated for all respondents, we find there is a

reasonable basis to impute, to importers, knowledge of dumping and likely injury. See the August 16, 2005, memorandum to Barbara E. Tillman, Acting Deputy Assistant Secretary, from Louis Apple, Director, entitled, "Antidumping Duty Investigation of Certain Orange Juice from Brazil - Affirmative Preliminary Determination of Critical Circumstances" (Critical Circumstances Memo) at Attachment II.

For Montecitrus, we have used AFA in the critical circumstances analysis. As AFA in this case, we assigned Montecitrus the highest margin stated in the notice of initiation, 60.29 percent, which exceeds the 15 percent threshold necessary to impute knowledge of dumping. Consequently, we have imputed knowledge of dumping with regard to Montecitrus.

Regarding the companies subject to the "All Others" rate, it is the Department's normal practice to conduct its critical circumstances analysis for these companies based on the experience of investigated companies. See, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars From Turkey*, 62 FR 9737, 9741 (Mar. 4, 1997). However, the Department does not automatically extend an affirmative critical circumstances determination to companies covered by the "All Others" rate. See, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan*, 64 FR 30574 (June 8, 1999) (*Stainless Steel from Japan*). Instead, the Department considers the traditional critical circumstances criteria with respect to the companies covered by the "All Others" rate. Consistent with *Stainless Steel from Japan*, the Department has, in this case, applied the traditional critical circumstances criteria to the "All Others" category for the antidumping investigation of certain orange juice from Brazil.

The dumping margin for the "All Others" category in the instant case, 27.16 percent, exceeds the 15-percent threshold necessary to impute knowledge of dumping. Therefore, we find there is a reasonable basis to impute, to importers, knowledge of dumping for the companies covered by the "All Others" rate. Consequently, we find that knowledge of dumping exists with regard to the companies subject to the "All Others" rate.

In determining whether there are "massive imports" over a "relatively short period," pursuant to section 733(e)(1)(B) of the Act, the Department normally compares the import volumes

of the subject merchandise for at least three months immediately preceding the filing of the petition (i.e., the “base period”) to a comparable period of at least three months following the filing of the petition (i.e., the “comparison period”). Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

The Department requested and obtained from Cutrale and Fischer monthly shipment data from June 2001 through June 2005. However, because this information was received too close to the date of the preliminary determination, we were unable to consider it for the preliminary determination. Instead, we relied on U.S. import data from the USITC DataWeb for imports through May 2005 (i.e., the latest month for which complete data exists at the time of the preliminary determination). According to these statistics, we found the volume of imports of certain orange juice

increased by more than 15 percent. We analyzed the time series data for the three years prior to the filing of the petition to address the issue of seasonality and found no seasonal pattern. As a result, we find that imports of subject merchandise were massive in the comparison period. For further discussion of this analysis, see the Critical Circumstances Memo at Attachments I and III.

In summary, we find that Cutrale, Fischer, Montecitrus, and the companies subject to the “All Others” rate satisfy the imputed knowledge of injurious dumping criterion under section 733(e)(1)(A)(ii) of the Act and the massive imports criterion in accordance with section 733(e)(1)(B) of the Act. Given the analysis summarized above, and described in more detail in the Critical Circumstances Memo, we preliminarily determine that critical circumstances exist for imports of certain orange juice produced in and exported from Brazil.

We will make a final determination concerning critical circumstances for all producers and exporters of subject

merchandise from Brazil when we make our final dumping determination in this investigation, which will be 135 days after publication of the preliminary dumping determination.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(e)(2)(A) of the Act, we are directing CBP to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication of this notice in the **Federal Register**. These suspension of liquidation instructions will remain in effect until further notice.

We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds CEP, as indicated in the chart below. The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-Average Margin Percentage	Critical Circumstances
Cutralé	24.62	Yes
Fischer	31.04	Yes
Montecitrus	60.29	Yes
All Others	27.16	Yes

The “All Others” rate is calculated exclusive of all *de minimis* margins and margins based entirely on adverse facts available.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports materially injure, or threaten material injury to, the U.S. industry.

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for case

briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice.

Requests should contain: 1) the party’s name, address, and telephone number; 2) the number of participants; and 3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: August 16, 2005.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5-4633 Filed 8-23-05; 8:45 am]

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of the Harmonized Tariff Schedule of the United States.¹

For further information concerning the conduct of this phase of the investigation, hearing procedures, 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 C (19 CFR part 207).

DATES: *Effective date:* August 24, 2005.

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.*—The final phase of this

¹For purposes of this investigation, the Department of Commerce (Commerce) has defined the subject imports 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 FCOJM; and (2) pasteurized single-strength orange juice which has not been concentrated, referred to as NFC.

The scope of this investigation with regard to FCOJM covers only FCOJM produced and/or exported by those companies which were excluded or revoked from the pre-existing antidumping order on FCOJ from Brazil (52 FR 16426 (May 5, 1987)) as of December 27, 2004. Those companies are Cargill Citrus Limitada, Fischer S/A—Agroindustria (formerly Citrosuco Paulista S.A.), Montecitrus Industria e Comercio Limitada, and Sucocitrico Cutrale, S.A. Commerce also revoked the pre-existing antidumping duty order on FCOJ with regard to two additional companies, Coopercitrus Industrial Frutesp and Frutropic S.A. that are now doing business under the name COINBRA-Frutesp. Commerce must make successor-in-interest findings with respect to each entity no later than its final determination in this case, and should they find COINBRA-Frutesp to be the successor-in-interest to one or both of these companies, imports of FCOJM from the successor company will be included in the scope of this proceeding.

Excluded from the scope of the investigation are imports of reconstituted orange juice and frozen concentrated orange juice for retail (FCOJR). Reconstituted orange juice is produced through further manufacture of FCOJM, by adding water, oils and essences to the orange juice concentrate. FCOJR is concentrated orange juice, typically at 42E 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.

investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain orange juice from Brazil are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on December 27, 2004, by Florida Citrus Mutual, A. Duda & Sons, Inc., Citrus World, Inc., Peace River Citrus Products, Inc., and Southern Garden Citrus Processing Corp.

Participation in the investigation and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

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 the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on December 20, 2005, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on January 10, 2006, at the

INTERNATIONAL TRADE COMMISSION

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

Certain Orange Juice From Brazil

AGENCY: International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731-TA-1089 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether 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 less-than-fair-value imports from Brazil of certain orange juice, provided for in subheadings 2009.11.00, 2009.12.25, 2009.12.45, and 2009.19.00

U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 3, 2006. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 6, 2006, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is December 29, 2005. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is January 17, 2006; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation, including statements of support or opposition to the petition, on or before January 17, 2006. On February 2, 2006, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before February 6, 2006, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to

the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

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

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: August 31, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05-17659 Filed 9-6-05; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF COMMERCE
International Trade Administration
(A-351-840)
Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil

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

EFFECTIVE DATE: January 13, 2006.

SUMMARY: On August 24, 2005, the Department of Commerce published its preliminary determination of sales at less than fair value (LTFV) in the antidumping duty investigation of certain orange juice from Brazil. The period of investigation (POI) is October 1, 2003, through September 30, 2004.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final determination differs from the preliminary determination. The final weighted-average dumping margins for the investigated companies are listed below in the section entitled "Final Determination Margins." In addition, we have determined that Coinbra Frutesp S.A. (Coinbra-Frutesp) is the successor-in-interest to Frutropic S.A. (Frutropic) and, thus, its production and/or exports of frozen concentrated orange juice for further manufacture (FCOJM) are covered by the scope of this proceeding. Finally, we determine that critical circumstances exist with regard to certain exports of subject merchandise from Brazil.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or Jill Pollack, Import Administration, International Trade Administration, U.S. Department

of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3874 or (202) 482-4593, respectively.

SUPPLEMENTARY INFORMATION:
Final Determination:

We determine that certain orange juice from Brazil is being, or is likely to be, sold in the United States at LTFV, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales of LTFV are shown in the "Continuation of Suspension of Liquidation" section of this notice. In addition, we determine that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of the subject merchandise produced by Sucocitrico Cutrale, S.A. (Cutrale), Montecitrus Trading S.A. (Montecitrus), and companies covered by the "All Others" rate. However, we determine that there is no reasonable basis to believe or suspect that critical circumstances exist with respect to imports of the subject merchandise produced by Fischer S/A - Agroindustria (Fischer). Finally, we determine that Coinbra-Frutesp is the successor-in-interest to Frutropic,¹ and thus its production and exports of FCOJM are covered by the scope of this proceeding.

Case History

The preliminary determination in this investigation was published on August 24, 2005. *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Critical Circumstances Determination: Certain Orange Juice from Brazil*, 70 FR 49557 (Aug. 24, 2005) (*Preliminary Determination*).

Since the preliminary determination, the following events have occurred.

From August through October 2005, we verified the questionnaire responses of the two participating respondents in this case, Cutrale and Fischer.

In November 2005, we received case briefs from the petitioners,² Cutrale, Fischer, and an interested party to this investigation, Louis Dreyfus Citrus, Inc. (Louis Dreyfus). We also received

¹ At the time of its revocation from the order, Frutropic no longer existed as a legal entity. Rather, this company had been formally dissolved and incorporated into its parent company, Coinbra. Because this change in corporate organization was limited to a change in name only, we find that all references to Frutropic apply equally to Coinbra.

² The petitioners in this investigation are Florida Citrus Mutual, A. Duda & Sons, Inc. (doing business as Citrus Belle), Citrus World, Inc., and Southern Garden Citrus Processing Corporation (doing business as Southern Gardens).

rebuttal briefs in November 2005 from the petitioners, Cutrale, Fischer, Louis Dreyfus, and an additional interested party, Citrovita Agro Industrial Ltda. (Citrovita). The Department held a public hearing on November 21, 2005, at the request of the petitioners.

Period of Investigation

The period of investigation is October 1, 2003, through September 30, 2004.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated January 6, 2006, which is adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B-099 of the main Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at <http://ia.ita.doc.gov/frn/index.html>. The paper copy and electronic version of the Decision Memorandum are identical in content.

Scope of Investigation

The scope of this investigation includes certain orange juice for transport and/or further manufacturing, produced in two different forms: (1) frozen orange juice in a highly concentrated form, sometimes referred to as FCOJM; and (2) pasteurized single-strength orange juice which has not been concentrated, referred to as not-from-concentrate (NFC). At the time of the filing of the petition, there was an existing antidumping duty order on frozen concentrated orange juice (FCOJ) from Brazil. *See Antidumping Duty Order; Frozen Concentrated Orange Juice from Brazil*, 52 FR 16426 (May 5, 1987). Therefore, the scope of this investigation with regard to FCOJM covers only FCOJM produced and/or exported by those companies which were excluded or revoked from the pre-existing antidumping order on FCOJ from Brazil as of December 27, 2004. Those companies are Cargill Citrus Limitada (Cargill), Coinbra-Frutesp, Cutrale, Fischer, and Montecitrus.

Excluded from the scope of the investigation are reconstituted orange juice and frozen concentrated orange juice for retail (FCOJR). Reconstituted orange juice is produced through further

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

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we have made certain changes to the margin calculations. For a discussion of these changes, see the "Margin Calculations" section of the Decision Memorandum.

Successor-in-Interest

As noted above, at the time of the filing of the petition, there was an existing antidumping duty order on FCOJ from Brazil. Therefore, the scope with regard to FCOJM covers only FCOJM produced and/or exported by those companies which were excluded or revoked from the pre-existing antidumping order on FCOJ from Brazil as of December 27, 2004. Two of these entities, Frutropic and Coopercitrus Industrial Frutesp (Frutesp), were purchased by the Louis Dreyfus group in the early 1990s, and they are now producing and exporting FCOJM under the name Coinbra-Frutesp. We analyzed the corporate structure changes on the record of this proceeding and find that Coinbra-Frutesp is the successor-in-interest to Frutropic. *See the Decision Memorandum at Comment 3.* Accordingly, Coinbra-Frutesp's production/exports of FCOJM are subject to the instant investigation. Because we find that Coinbra-Frutesp is the successor-in-interest to Frutropic, a separate finding for Frutesp is unnecessary, and thus we have not analyzed this issue with respect to Frutesp.

Montecitrus

In October 1994, the Department revoked a company named Montecitrus Trading S.A. from the then-existing order on FCOJ from Brazil. *See Frozen Concentrated Orange Juice From Brazil;*

Final Results and Termination in Part of Antidumping Duty Administrative Review; Revocation in Part of the Antidumping Duty Order, 56 FR 52510 (Oct. 21, 1991). However, in the instant investigation, this company entered a notice of appearance on behalf of the corporate grouping of which Montecitrus is a part (*see the February 1, 2005, letter from Montecitrus to the Department*). For this reason, we sent a questionnaire to the Montecitrus Group, and we received a response to section A of the Department's questionnaire on behalf of this entity. Subsequently, Montecitrus ceased participating in this investigation and it withdrew its business proprietary data from the record of the proceeding.

In both the initiation and the preliminary determination, we inadvertently referenced the producing company within the Montecitrus Group, Montecitrus Industria e Comercio Limitada, rather than Montecitrus Trading, as the entity subject to this proceeding. However, as part of its public section A questionnaire response, Montecitrus informed the Department that it had merged with Montecitrus Industria e Comercio Limitada. *See page 6 of the May 2, 2005, submission from Miller and Chevalier Chartered to the Secretary of Commerce, "Re-Bracketed Section A Questionnaire Response of Montecitrus Group."* Because our scope specifically covers companies excluded and revoked from the order, we find that we should have referenced Montecitrus Trading S.A. as the relevant party to this proceeding in our **Federal Register** notices. We have corrected this error in the final determination. Consequently, we have instructed U.S. Customs and Border Protection (CBP) to require a cash deposit or the posting of a bond equal to the antidumping duty rate listed below for Montecitrus Trading S.A.

Use of AFA for Montecitrus

As noted in the preliminary determination, Montecitrus notified the Department on May 9, 2005, that it no longer intended to participate in the investigation. *See Preliminary Determination*, 70 FR at 49560. Section 776(a)(2) of the Act provides that, if an interested party: (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination.

In the instant investigation, by withdrawing its information from the record, the Department found that, pursuant to section 776(a)(2)(A) of the Act, Montecitrus withheld requested information. Further, pursuant to section 776(a)(2)(B) of the Act, the Department determined that Montecitrus failed to provide the information requested by the Department within the established deadlines. Finally, by withdrawing from the investigation and ceasing to participate in the proceeding, the Department found that, pursuant to section 776(a)(2)(C) of the Act, Montecitrus significantly impeded the investigation. Consequently, pursuant to sections 776(a)(2)(A)-(C) of the Act, the Department continues to find that the application of facts otherwise available to Montecitrus is warranted for the final determination.

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (Aug. 30, 2002). To examine whether the respondent cooperated by acting to the best of its ability under section 776(b) of the Act, the Department considers, inter alia, the accuracy and completeness of submitted information and whether the respondent has hindered the calculation of accurate dumping margins. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From Brazil*, 65 FR 5554, 5567 (Feb. 4, 2000). In the instant investigation, by ceasing to participate in the investigation, Montecitrus decided not to cooperate and thus did not act to the best of its ability to comply with a request for information. Consequently, we find that an adverse inference is warranted in determining an antidumping duty margin for Montecitrus.

Section 776(b) of the Act authorizes the Department to use, as AFA, information derived from the petition, a final investigation determination, a previous administrative review, or any other information placed on the record. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse to induce respondents to

provide the Department with complete and accurate information in a timely manner. *See, e.g., Carbon and Certain Alloy Steel Wire Rod from Brazil: Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances*, 67 FR 55792 (Aug. 30, 2002); *Static Random Access Memory Semiconductors from Taiwan: Final Determination of Sales at Less than Fair Value*, 63 FR 8909 (Feb. 23, 1998). The Department applies AFA "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See Statement of Administrative Action* accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, vol. 1, at 870 (1994) (SAA).

In accordance with our standard practice, as AFA, we are assigning Montecitrus a rate which is the higher of: (1) the highest margin stated in the notice of initiation (*i.e.*, the recalculated petition margin); or (2) the highest margin calculated for any respondent in this investigation. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Sweden*, 70 FR 28278 (May 17, 2005). In this case, the final AFA margin is 60.29 percent, which is the highest margin stated in the notice of initiation. *See Initiation Notice*, 70 FR at 7236. We find that this rate is sufficiently high as to effectuate the purpose of the facts available rule (*i.e.*, to encourage participation in future segments of this proceeding).

Corroboration of Information

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as "{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* 19 CFR 351.308(c) and (d); *see also* the SAA at 870.

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See* the SAA at 870. The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *Id.* To corroborate secondary information, the Department

will, to the extent practicable, examine the reliability and relevance of the information used.

In order to determine the probative value of the margins in the petition for use as AFA for purposes of this final determination, we relied on our analysis from the preliminary determination. *See* Preliminary Determination, 70 FR at 49560–49561. Based on this analysis, we determined that the petition price and cost information has probative value. Accordingly, we find that the highest margin stated in the notice of initiation, 60.29 percent, is corroborated within the meaning of section 776(c) of the Act.

Critical Circumstances

In our preliminary determination, we found that critical circumstances existed for all mandatory respondents and companies subject to the "All Others" rate. *See Preliminary Determination*, 70 FR at 49565–49566. We received comments on our critical circumstances determination from Fischer and the petitioners.

Section 735(a)(3) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that an increase in imports of 15 percent during the "relatively short period" of time may be considered "massive." Section 351.206(i) of the Department's regulations defines "relatively short period" as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. The regulations also provide, however, that if the Department finds that importers, exporters, or producers had reason to believe, at some time prior to

the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.

In determining whether the above statutory criteria have been satisfied, we examined: (1) the evidence placed on the record by the respondents and the petitioners; (2) information obtained from the USITC dataweb; and (3) the ITC's preliminary determination of injury (*See Certain Orange Juice from Brazil, Investigation No. 731-TA-1089 (Preliminary)*, 70 FR 20595 (Apr. 20, 2005) (*ITC Preliminary Determination*)).

To determine whether there is a history of injurious dumping of the merchandise under investigation, in accordance with section 735(a)(3)(A)(i) of the Act, the Department normally considers evidence of an existing antidumping duty order on the subject merchandise in the United States or elsewhere to be sufficient. *See Preliminary Determination of Critical Circumstances: Steel Concrete Reinforcing Bars From Ukraine and Moldova*, 65 FR 70696 (Nov. 27, 2000). With regard to imports of certain orange juice from Brazil, the petitioners' claim that the pre-existing order on FCOJ from Brazil should be considered to be a history of dumping. However, we disagree that order demonstrates a history of dumping of subject merchandise because there is no overlap in the scope of that order and this proceeding. For this reason, the Department does not find a history of injurious dumping of the subject merchandise from Brazil pursuant to section 735(a)(3)(A)(i) of the Act.

To determine whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at LTFV and that there was likely to be material injury by reason of such sales in accordance with section 735(a)(3)(A)(ii) of the Act, the Department normally considers margins of 25 percent or more for export price (EP) sales or 15 percent or more for constructed export price (CEP) transactions sufficient to impute knowledge of dumping. *See Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 31972, 31978 (Oct. 19, 2001). Both Cutrale and Fischer made only CEP sales during the POI. The final dumping margin calculated for Cutrale exceeded the threshold sufficient to impute knowledge of dumping (*i.e.*, 15 percent for CEP sales), while the final dumping margin calculated for Fischer did not.

Therefore, we determine that there is sufficient basis to find that importers should have known that Cutrale was selling the subject merchandise at LTFV pursuant to section 735(a)(3)(A)(ii) of the Act. However, there is an insufficient basis to find that importers should have known that Fischer was selling the subject merchandise at less than its fair value pursuant to section 735(a)(3)(A)(ii) of the Act. Regarding Montecitrus, we find that importers of subject merchandise produced by this company knew or should have known that this company was selling the subject merchandise at LTFV because the final dumping margin for it exceeds the threshold sufficient to impute knowledge of dumping.

In determining whether an importer knew or should have known that there was likely to be material injury by reason of dumped imports, the Department normally will look to the preliminary injury determination of the ITC. If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that material injury is likely by reason of such imports. *See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 61964 (Nov. 20, 1997). In the present case, the ITC preliminarily found reasonable indication that an industry in the United States is materially injured by imports of certain orange juice from Brazil. *See ITC Preliminary Determination*. Based on the ITC's preliminary determination of injury, and the final antidumping margins for Cutrale and Montecitrus, the Department finds that there is a reasonable basis to conclude that the importer knew or should have known that there was likely to be injurious dumping of subject merchandise for these companies.

Regarding the companies subject to the "All Others" rate, it is the Department's normal practice to conduct its critical circumstances analysis for these companies based on the experience of investigated companies. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars From Turkey*, 62 FR 9737, 9741 (Mar. 4, 1997). However, the Department does not automatically extend an affirmative critical circumstances determination to companies covered by the "All Others" rate. *See Notice of Final Determination of Sales at Less Than Fair Value:*

Stainless Steel Sheet and Strip in Coils from Japan, 64 FR 30574 (June 8, 1999) (*Stainless Steel from Japan*). Instead, the Department considers the traditional critical circumstances criteria with respect to the companies covered by the "All Others" rate. Consistent with *Stainless Steel from Japan*, the Department has, in this case, applied the traditional critical circumstances criteria to the "All Others" category for the antidumping investigation of certain orange juice from Brazil.

In determining whether there is a reasonable basis to believe or suspect that importers knew or should have known that companies subject to the "All Others" rate were selling certain orange juice from Brazil at LTFV, we look to the "All Others" dumping margin, which is based on the weighted-average rate of all investigated companies where the margin is not based on adverse facts available. The dumping margin for the "All Others" category in the instant case exceeds the 15 percent threshold necessary to impute knowledge of dumping. Therefore, we find that importers had knowledge that companies covered by the "All Others" rate were dumping subject merchandise in the United States during the POI, and that the importer knowledge criterion, as set forth in section 735(a)(3)(A)(ii) of the Act, has been met for the "All Others" companies. Based on the ITC's preliminary determination of injury, and the final antidumping margin for companies subject to the "All Others" rate, the Department finds that there is a reasonable basis to conclude that the importer knew or should have known that there was likely to be injurious dumping of subject merchandise for these companies.

In determining whether there are "massive imports" over a "relatively short period," pursuant to section 735(a)(3)(B) of the Act, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the base period) to a comparable period of at least three months following the filing of the petition (*i.e.*, the comparison period). Accordingly, in determining whether imports of the subject merchandise have been massive, we have based our analysis for Cutrale and the companies covered by the "All Others" rate on shipment data for comparable six-month periods preceding and following the filing of the petition.

In determining whether imports for Cutrale were massive under 19 CFR 351.206(h), we note that we were unable

to verify Cutrale's company-specific data. Because Cutrale submitted information that could not be verified, the Department finds that, pursuant to section 776(a)(2)(D) of the Act, it is appropriate to use facts available (FA) in reaching our final determination regarding critical circumstances for Cutrale. Further, because Cutrale did not act to the best of its ability to comply with a request for information, we find that an adverse inference in selecting from the facts otherwise available is warranted. As AFA, we have relied on Cutrale's reported monthly shipment data for the base and comparison periods because this data shows Cutrale's imports of the subject merchandise were massive in accordance with section 735(a)(3)(B) of the Act.

Regarding Montecitrus, we find that Montecitrus's withdrawal from the instant investigation precluded the Department from soliciting company-specific import data. Thus, we have based our determination of whether imports for Montecitrus were massive on AFA and find that imports for Montecitrus were massive in accordance with section 735(a)(3)(B) of the Act.

In determining whether imports for the companies subject to the "All Others" rate were massive, we examined USITC dataweb data for a six-month period (*i.e.*, January to June 2005) adjusted to exclude Cutrale's and Fischer's company-specific data for the same period. Because the volume of imports increased by more than 15 percent from January to June 2005 when compared to the import volume in the base period, we find that imports for the companies subject to the "All Others" rate were massive in accordance with section 735(a)(3)(B) of the Act.

In making our critical circumstances determination, we also considered the impact of seasonality on imports of certain orange juice. We noted in our preliminary affirmative determination of critical circumstances that imports of certain orange juice are not subject to seasonal trends. *See* the August 16, 2005, memorandum from Louis Apple

to Barbara E. Tillman entitled, "Antidumping Duty Investigation of Certain Orange Juice from Brazil - Affirmative Preliminary Determination of Critical Circumstances." Because no interested parties have raised issues of seasonality subsequent to our preliminary determination, we have not revisited our analysis with regard to this issue. Consequently, we find that any surge in U.S. imports of certain orange juice cannot be explained by seasonal trends.

Based on the fact that: 1) we find that knowledge of dumping exists with regard to Cutrale, Montecitrus, and the companies subject to the "All Others" rate; and 2) there have been massive imports of certain orange juice which cannot be accounted for by seasonal trends for these parties, we find that critical circumstances exist with regard to imports of certain orange juice from Brazil for Cutrale, Montecitrus, and companies subject to the "All Others" rate. However, because we do not find knowledge of dumping with regard to Fischer, we find that critical circumstances do not exist for this company.

For further discussion, see the Decision Memorandum at Comment 4 and the January 6, 2006, memorandum to Irene Darzenta Tzafolias, Acting Director, Office 2, from the team entitled, "Antidumping Duty Investigation of Certain Orange Juice from Brazil - Final Determination of Critical Circumstances."

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Cutrale and Fischer for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondents.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing CBP to continue to suspend liquidation

of entries of certain orange juice from Brazil produced and/or exported by Cutrale, Montecitrus, and companies subject to the "All Others" rate that are entered, or withdrawn from warehouse, for consumption on or after May 26, 2005, 90 days prior to the date of publication of the preliminary determination in the **Federal Register**. However, because we find that critical circumstances do not exist with regard to imports of certain orange juice from Brazil produced and/or exported by Fischer, we will instruct CBP to terminate the retroactive suspension of liquidation for Fischer between May 26, 2005, and August 24, 2005 (the date of publication of the preliminary determination). CBP shall continue to require a cash deposit or the posting of a bond for all companies based on the estimated weighted-average dumping margins shown below. The suspension of liquidation instructions will remain in effect until further notice.

We will also instruct CBP that, for NFC, the "All Others" rate applies to all companies not specifically named in the "Final Determination Margins" section, below, including Coinbra-Frutesp. However, for FCOJM, the "All Others" rate only applies to FCOJM produced and/or exported by Cargill. CBP shall not suspend entries of FCOJM from companies other than Cargill, Cutrale, Fischer, and Montecitrus at this time.

Regarding Coinbra-Frutesp, this notice serves as notification to the ITC that Coinbra-Frutesp's production/exports of FCOJM are part of the class or kind of merchandise under investigation. Consequently, we anticipate that the ITC will include these exports in its final injury determination. If the ITC's final determination is affirmative, we will instruct CBP to begin suspending liquidation of any entries of FCOJM produced and/or exported by Coinbra-Frutesp after the date of publication of that determination.

Final Determination Margins

The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-Average Margin Percentage	Circumstances Critical
Fischer S/A - Agroindustria	9.73	No
Montecitrus Trading S.A.	60.29	Yes
Sucocitrico Cutrale, S.A.	19.19	Yes
All Others	15.42	Yes

In accordance with section 735(c)(5)(A) of the Act, we have based the "All Others" rate on the weighted average of the dumping margins

calculated for the exporters/manufacturers investigated in this proceeding. The "All Others" rate is calculated exclusive of all de minimis

margins and margins based entirely on AFA.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine within 45 days whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/ destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act.

Dated: January 6, 2006.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

**Appendix Issues in the Decision Memo
Comments**

1. Legal Authority to Initiate This Proceeding
2. Scope "Clarification"
3. Successor-in-Interest Determination for Coinbra-Frutesp S.A. (Coinbra-Frutesp)
4. Critical Circumstances
5. Refunds of U.S. Customs Duties
6. Data Changes Arising from the Sales Verifications
7. Treatment of By-Products
8. Trading Gains and Losses on Cutrale's Futures Contracts
9. Offset to Indirect Selling Expenses for Futures Trading Gains and Losses for Cutrale
10. Constructed Export Price (CEP) Offset for Cutrale
11. International Freight Expenses for Cutrale
12. Fischer's Unreported U.S. Sales to Puerto Rico

13. Packing Services Provided by an Affiliate of Fischer
14. U.S. Duty Reimbursements for Fischer
15. Bunker Fuel Adjustments for Fischer
16. Home Market Credit Expenses for Fischer
17. Indirect Selling Expense Ratio for Fischer
18. AFA for Montecitrus
19. Clerical Errors in the Preliminary Determination for Cutrale
20. Growing Season for Cutrale
21. Data Changes Arising from the Cutrale Cost Verification
22. By-Product Adjustment Associated with Cutrale's Non-Orange Fruit Inputs
23. Non-Product Specific Costs for Fischer
24. General and Administrative (G&A) Expenses for Fischer
25. Brix Level for Fischer's Dairy Pak Orange Juice
26. Harvesting Costs for Fischer
27. Undervalued Orange Cost for Fischer
28. Finished Goods "Purchased" from One of Fischer's Affiliates

[FR Doc. E6-333 Filed 1-12-06; 8:45 am]

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APPENDIX B
HEARING WITNESSES

CALENDAR OF PUBLIC HEARING

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

Subject: Certain Orange Juice from Brazil

Inv. No.: 731-TA-1089 (Final)

Date and Time: January 10, 2006 - 9:30 a.m.

Sessions were held in connection with this investigation in the Main Hearing Room (room 101), 500 E Street, SW, Washington, D.C.

OPENING REMARKS:

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

In Support of the Imposition of Antidumping Duties:

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

Florida Citrus Mutual ("FCM")
A. Duda & Sons, Inc. (doing business as Citrus Belle)
Citrus World, Inc.
Southern Gardens Citrus Processing Corporation
(doing business as Southern Gardens)

Andrew LaVigne, Executive Vice President and CEO, FCM

Martin McKenna, President, FCM; and Grower

Larry Black, Manager, Flying V., Inc.; and Grower

**In Support of the Imposition of
Antidumping Duties (continued):**

Robert Behr, Vice President, Planning and Product
Services, Citrus World, Inc.

Tristan Chapman, Vice President, Plant Operations,
Southern Gardens Citrus Processing Corporation

Charles F. Roper, General Manager, Roper Growers Cooperative

Victor Story, Grower, Story Citrus Services, Inc.

Thomas Spreen, Chair, Food & Resource Economics,
Institute of Food and Agricultural Services,
University of Florida

Amy Warlick, Economist, Barnes, Richardson & Colburn

Matthew T. McGrath)
Stephen W. Brophy) – OF COUNSEL
Neven Stipanovic)

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

Willkie Farr & Gallagher LLP
Washington, D.C.
on behalf of

Sucocitrico Cutrale Ltda.
Louis Dreyfus Citrus, Inc.

Hugh Thompson, President, Cutrale Citrus Juices USA, Inc.

Paul Burkhardt, General Manger, Citrus Products, Inc.

Nick Emmanuel, CEO and President, Citrosuo, America

**In Opposition to the Imposition of
Antidumping Duties (continued):**

Randal Freeman, Senior Vice President, Louis Dreyfus Citrus, Inc.

Gary Viljoen, CEO, Vitality Food Service, Inc.

Sean Frielich, Senior Vice President, Innovation and Quality,
Vitality Food Service, Inc.

Colin A. Carter, Professor, Department of Agricultural and Resource Economics,
University of California, Davis

Roger Brinner, Senior Economist, The Parthenon Group

Christopher Dunn)
James P. Durling) – OF COUNSEL
Rebecca Griffin)

Arent Fox PLLC
Washington, D.C.
on behalf of

The Coca-Cola Company

Dan Casper, Global Procurement Manager, The Minute Maid Company

Todd Grice, Counsel, Technical & Supply Chain, The Coca-Cola Company

Matthew J. Clark)
) – OF COUNSEL
Nancy A. Noonan)

**In Opposition to the Imposition of
Antidumping Duties (continued):**

Neville Peterson LLP
Washington, D.C.
on behalf of

Tropicana Products, Inc. (“Tropicana”)

Jim Zellner, Director, Fruit Procurement, Tropicana

John M. Peterson)
) – OF COUNSEL
George W. Thompson)

Kalik and Lewin
Washington, D.C.
on behalf of

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

Robert Kalik) – OF COUNSEL

Wilmer Cutler Pickering Hale and Dorr LLP
Washington, D.C.
on behalf of

Votorantim International North America, Inc. (“Vina”)

Eduardo Scabbia, President, Vina

John D. Greenwald)
) – OF COUNSEL
Lynn M. Fischer Fox)

**In Opposition to the Imposition of
Antidumping Duties (continued):**

Miller & Chevalier
Washington, D.C.
on behalf of

Montecitrus Group (“Montecitrus”)

Peter Le Compte, Sourcing Manager, Small Plant Foods Division,
General Mills, Inc.

Duane W. Layton)
) – OF COUNSEL
Sydney H. Mintzer)

CLOSING REMARKS:

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

APPENDIX C
SUMMARY DATA

Table C-1
FCOJM: Summary data concerning the U.S. market, crop years 2001/02 - 2004/05

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

Item	Reported data				Period changes			
	Crop years				2001/02 -	2001/02 -	2002/03 -	2003/04 -
	2001/02	2002/03	2003/04	2004/05	2004/05	2002/03	2003/04	2004/05
Total available supply:								
Amount	938,309	873,089	937,253	836,636	-10.8	-7.0	7.3	-10.7
Domestic share (1)	81.0	69.7	78.1	60.9	-20.1	-11.4	8.5	-17.2
Importers' share (1):								
Brazil	11.2	23.6	15.2	25.1	13.9	12.4	-8.4	9.9
All other sources	7.8	6.7	6.7	14.0	6.2	-1.1	-0.0	7.3
Total imports	19.0	30.3	21.9	39.1	20.1	11.4	-8.5	17.2
U.S. imports from:								
Brazil:								
Quantity	104,857	206,064	142,418	209,620	99.9	96.5	-30.9	47.2
Value	90,340	205,709	127,358	199,970	121.4	127.7	-38.1	57.0
Unit value	\$0.86	\$1.00	\$0.89	\$0.95	10.7	15.9	-10.4	6.7
Ending inventory quantity	33,791	41,795	26,633	51,312	51.9	23.7	-36.3	92.7
All other sources:								
Quantity	73,140	58,708	62,603	117,209	60.3	-19.7	6.6	87.2
Value	99,732	74,759	51,097	104,020	4.3	-25.0	-31.7	103.6
Unit value	\$1.36	\$1.27	\$0.82	\$0.89	-34.9	-6.6	-35.9	8.7
Ending inventory quantity	1,670	25	0	3,227	93.3	-98.5	-100.0	(2)
All sources:								
Quantity	177,997	264,772	205,021	326,829	83.6	48.8	-22.6	59.4
Value	190,073	280,468	178,455	303,990	59.9	47.6	-36.4	70.3
Unit value	\$1.07	\$1.06	\$0.87	\$0.93	-12.9	-0.8	-17.8	6.9
Ending inventory quantity	35,461	41,820	26,633	54,540	53.8	17.9	-36.3	104.8
U.S. domestic shipment quantity	760,312	608,317	732,232	509,807	-32.9	-20.0	20.4	-30.4

(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 -	2003/04 -
	2001/02	2002/03	2003/04	2004/05	2004/05	2002/03	2003/04	2004/05
U.S. processors:								
Average capacity quantity	1,031,378	970,967	1,063,520	972,247	-5.7	-5.9	9.5	-8.6
Production quantity	938,152	669,838	934,019	421,083	-55.1	-28.6	39.4	-54.9
Capacity utilization (1)	91.0	69.0	87.8	43.3	-47.7	-22.0	18.8	-44.5
U.S. shipments:								
Quantity	839,745	630,418	801,337	467,563	-44.3	-24.9	27.1	-41.7
Value	703,732	535,179	635,313	388,057	-44.9	-24.0	18.7	-38.9
Unit value	\$1.08	\$1.12	\$0.99	\$1.00	-7.0	3.8	-11.6	1.4
Export shipments:								
Quantity	97,103	37,855	61,217	47,450	-51.1	-61.0	61.7	-22.5
Value	104,911	39,999	54,939	37,926	-63.8	-61.9	37.4	-31.0
Unit value	\$1.08	\$1.06	\$0.90	\$0.80	-26.0	-2.2	-15.1	-10.9
Ending inventory quantity	289,580	293,214	377,622	266,243	-8.1	1.3	28.8	-29.5
Inventories/total shipments (1)	30.9	43.9	43.8	51.7	20.8	13.0	-0.1	7.9
Production workers	1,980	1,698	1,982	1,448	-26.9	-14.2	16.7	-27.0
Hours worked (1,000s)	4,809	3,810	4,620	3,213	-33.2	-20.8	21.3	-30.5
Wages paid (\$1,000)	57,763	44,698	54,650	40,895	-29.2	-22.6	22.3	-25.2
Hourly wages	\$12.01	\$11.73	\$11.83	\$12.73	6.0	-2.3	0.8	7.6
Productivity (pounds per hour)	193.8	173.2	202.7	128.7	-33.6	-10.6	17.0	-36.5
Unit labor costs	\$0.06	\$0.07	\$0.06	\$0.10	59.6	9.3	-13.8	69.5

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

(2) Not applicable.

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

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

Table C-1A

FCOJM: Summary data concerning the U.S. market (excluding * from domestic processors),
crop years 2001/02 - 2004-05**

* * * * *

Table C-1B

FCOJM: Summary data concerning the U.S. market (excluding * from domestic processors),
crop years 2001/02 - 2004-05**

* * * * *

Table C-2
NFCOJ: Summary data concerning the U.S. market, crop years 2001/02 - 2004/05

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

Item	Reported data				Period changes			
	Crop years				2001/02 -	2001/02 -	2002/03 -	2003/04 -
	2001/02	2002/03	2003/04	2004/05	2004/05	2002/03	2003/04	2004/05
Total available supply:								
Amount	511,812	553,464	499,411	664,034	29.7	8.1	-9.8	33.0
Domestic share (1)	98.6	96.0	97.3	96.2	-2.4	-2.6	1.3	-1.1
Importers' share (1):								
Brazil	1.0	3.8	2.4	3.3	2.4	2.9	-1.5	1.0
All other sources	0.5	0.2	0.3	0.5	0.0	-0.3	0.2	0.2
Total imports	1.4	4.0	2.7	3.8	2.4	2.6	-1.3	1.1
U.S. imports from:								
Brazil:								
Quantity	4,871	21,216	11,785	22,091	353.5	335.5	-44.5	87.5
Value	8,822	36,550	15,344	32,510	268.5	314.3	-58.0	111.9
Unit value	\$1.81	\$1.72	\$1.30	\$1.47	-18.7	-4.9	-24.4	13.0
Ending inventory quantity	0	0	0	0	(2)	(2)	(2)	(2)
All other sources:								
Quantity	2,419	881	1,564	3,223	33.2	-63.6	77.6	106.0
Value	3,370	1,734	2,551	5,172	53.5	-48.5	47.1	102.7
Unit value	\$1.39	\$1.97	\$1.63	\$1.60	15.2	41.4	-17.2	-1.6
Ending inventory quantity	23	14	9	209	795.8	-41.7	-35.7	(3)
All sources:								
Quantity	7,291	22,097	13,349	25,314	247.2	203.1	-39.6	89.6
Value	12,192	38,285	17,895	37,682	209.1	214.0	-53.3	110.6
Unit value	\$1.67	\$1.73	\$1.34	\$1.49	-11.0	3.6	-22.6	11.0
Ending inventory quantity	23	14	9	209	795.8	-41.7	-35.7	(3)
U.S. domestic shipment quantity	504,521	531,368	486,062	638,720	26.6	5.3	-8.5	31.4

(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 -	2003/04 -
	2001/02	2002/03	2003/04	2004/05	2004/05	2002/03	2003/04	2004/05
U.S. processors:								
Average capacity quantity	614,262	674,674	627,120	718,393	17.0	9.8	-7.0	14.6
Production quantity	467,385	556,265	531,322	544,323	16.5	19.0	-4.5	2.4
Capacity utilization (1)	76.1	82.4	84.7	75.8	-0.3	6.4	2.3	-9.0
U.S. shipments:								
Quantity	498,930	564,071	547,462	581,080	16.5	13.1	-2.9	6.1
Value	627,684	712,316	685,774	715,259	14.0	13.5	-3.7	4.3
Unit value	\$1.37	\$1.39	\$1.37	\$1.39	1.4	0.9	-1.5	2.0
Export shipments:								
Quantity	21,000	12,903	13,090	14,016	-33.3	-38.6	1.4	7.1
Value	27,212	17,673	16,212	18,672	-31.4	-35.1	-8.3	15.2
Unit value	\$1.30	\$1.37	\$1.24	\$1.33	2.8	5.7	-9.6	7.6
Ending inventory quantity	134,161	146,598	162,762	148,938	11.0	9.3	11.0	-8.5
Inventories/total shipments (1)	25.8	25.4	29.0	25.0	-0.8	-0.4	3.6	-4.0
Production workers	1,465	1,747	1,560	1,592	8.7	19.2	-10.7	2.1
Hours worked (1,000s)	4,289	4,453	3,858	4,050	-5.6	3.8	-13.4	5.0
Wages paid (\$1,000)	60,737	73,010	68,073	72,590	19.5	20.2	-6.8	6.6
Hourly wages	\$14.16	\$16.39	\$17.65	\$17.92	26.6	15.8	7.6	1.6
Productivity (pounds per hour)	108.5	121.9	137.2	130.2	20.1	12.4	12.6	-5.1
Unit labor costs	\$0.13	\$0.13	\$0.13	\$0.14	5.4	3.0	-4.4	7.0

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

(2) Not applicable.

(3) Increase greater than 1,000 percent.

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

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

Table C-2A

NFCOJ: Summary data concerning the U.S. market (excluding * from domestic processors), crop years 2001/02 - 2004-05**

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Table C-2B

NFCOJ: Summary data concerning the U.S. market (excluding * from domestic processors), crop years 2001/02 - 2004-05**

* * * * *

Table C-3

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

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

Item	Reported data				Period changes			
	Crop years				2001/02 - 2004/05	2001/02 - 2002/03	2002/03 - 2003/04	2003/04 - 2004/05
	2001/02	2002/03	2003/04	2004/05				
Total available supply:								
Amount	1,450,121	1,426,553	1,436,664	1,500,670	3.5	-1.6	0.7	4.5
Domestic share (1)	87.2	79.9	84.8	76.5	-10.7	-7.3	4.9	-8.3
Importers' share (1):								
Brazil	7.6	15.9	10.7	15.4	7.9	8.4	-5.2	4.7
All other sources	5.2	4.2	4.5	8.0	2.8	-1.0	0.3	3.6
Total imports	12.8	20.1	15.2	23.5	10.7	7.3	-4.9	8.3
U.S. imports from:								
Brazil:								
Quantity	109,728	227,280	154,203	231,711	111.2	107.1	-32.2	50.3
Value	99,162	242,259	142,702	232,481	134.4	144.3	-41.1	62.9
Unit value	\$0.90	\$1.07	\$0.93	\$1.00	11.0	17.9	-13.2	8.4
Ending inventory quantity	33,791	41,795	26,633	51,312	51.9	23.7	-36.3	92.7
All other sources:								
Quantity	75,559	59,589	64,167	120,432	59.4	-21.1	7.7	87.7
Value	103,102	76,494	53,648	109,191	5.9	-25.8	-29.9	103.5
Unit value	\$1.36	\$1.28	\$0.84	\$0.91	-33.6	-5.9	-34.9	8.4
Ending inventory quantity	1,693	39	9	3,436	103.0	-97.7	-77.5	(2)
All sources:								
Quantity	185,287	286,869	218,370	352,143	90.1	54.8	-23.9	61.3
Value	202,265	318,753	196,350	341,672	68.9	57.6	-38.4	74.0
Unit value	\$1.09	\$1.11	\$0.90	\$0.97	-11.1	1.8	-19.1	7.9
Ending inventory quantity	35,484	41,834	26,642	54,749	54.3	17.9	-36.3	105.5
U.S. domestic shipment quantity	1,264,833	1,139,684	1,218,294	1,148,526	-9.2	-9.9	6.9	-5.7

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

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

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

(2) Increase greater than 1,000 percent.

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

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

Table C-3A

Certain orange juice: Summary data concerning the U.S. market (excluding * from domestic processors), crop years 2001/02 - 2004-05**

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Table C-3B

Certain orange juice: Summary data concerning the U.S. market (excluding * from domestic processors), crop years 2001/02 - 2004-05**

* * * * *

Table C-4

Certain orange juice: Summary financial data concerning the U.S. market, fiscal years 2002 - 2004, January-September 2004, and January-September 2005

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

Item	Reported data					Period changes			
	Fiscal years			January-September		FY 2002 -	FY 2002 -	FY 2003 -	Jan.-Sept.
	FY 2002	FY 2003	FY 2004	2004	2005	2004	2003	2004	2004-05
Non-toll + tolling operations									
FCOJM:									
Net sales:									
Quantity	795,429	806,543	683,717	657,172	517,853	-14.0	1.4	-15.2	-21.2
Value	670,537	631,106	526,063	461,359	449,643	-21.5	-5.9	-16.6	-2.5
Unit value	\$0.84	\$0.78	\$0.77	\$0.70	\$0.87	-8.7	-7.2	-1.7	23.7
Cost of goods sold (COGS)	603,268	578,258	520,681	413,541	427,445	-13.7	-4.1	-10.0	3.4
Gross profit or (loss)	67,269	52,848	5,382	47,818	22,198	-92.0	-21.4	-89.8	-53.6
SG&A expenses	26,469	26,185	25,839	20,773	18,026	-2.4	-1.1	-1.3	-13.2
Operating income or (loss)	40,800	26,663	(20,457)	27,045	4,172	(2)	-34.6	(2)	-84.6
Capital expenditures	22,540	8,727	12,177	8,797	13,565	-46.0	-61.3	39.5	54.2
Unit COGS	\$0.76	\$0.72	\$0.76	\$0.63	\$0.83	0.4	-5.5	6.2	31.2
Unit SG&A expenses	\$0.03	\$0.03	\$0.04	\$0.03	\$0.03	13.6	-2.4	16.4	10.1
Unit operating income or (loss) ..	\$0.05	\$0.03	(\$0.03)	\$0.04	\$0.01	(2)	-35.6	(2)	-80.4
COGS/sales (1)	90.0	91.6	99.0	89.6	95.1	9.0	1.7	7.4	5.4
Operating income or (loss)/ sales (1)	6.1	4.2	(3.9)	5.9	0.9	-10.0	-1.9	-8.1	-4.9
NFCOJ:									
Net sales:									
Quantity	189,585	168,445	220,771	130,862	177,675	16.4	-11.2	31.1	35.8
Value	181,503	150,803	192,644	114,745	154,134	6.1	-16.9	27.7	34.3
Unit value	\$0.96	\$0.90	\$0.87	\$0.88	\$0.87	-8.9	-6.5	-2.5	-1.1
Cost of goods sold (COGS)	144,173	119,364	172,164	91,481	137,230	19.4	-17.2	44.2	50.0
Gross profit or (loss)	37,330	31,439	20,480	23,264	16,904	-45.1	-15.8	-34.9	-27.3
SG&A expenses	6,820	6,369	8,593	5,185	6,174	26.0	-6.6	34.9	19.1
Operating income or (loss)	30,510	25,070	11,887	18,079	10,730	-61.0	-17.8	-52.6	-40.6
Capital expenditures	25,267	3,290	875	2,665	821	-96.5	-87.0	-73.4	-69.2
Unit COGS	\$0.76	\$0.71	\$0.78	\$0.70	\$0.77	2.5	-6.8	10.0	10.5
Unit SG&A expenses	\$0.04	\$0.04	\$0.04	\$0.04	\$0.03	8.2	5.1	2.9	-12.3
Unit operating income or (loss) ..	\$0.16	\$0.15	\$0.05	\$0.14	\$0.06	-66.5	-7.5	-63.8	-56.3
COGS/sales (1)	79.4	79.2	89.4	79.7	89.0	9.9	-0.3	10.2	9.3
Operating income or (loss)/ sales (1)	16.8	16.6	6.2	15.8	7.0	-10.6	-0.2	-10.5	-8.8
Certain orange juice:									
Net sales:									
Quantity	985,014	974,988	904,488	788,034	695,528	-8.2	-1.0	-7.2	-11.7
Value	852,040	781,909	718,707	576,104	603,777	-15.6	-8.2	-8.1	4.8
Unit value	\$0.87	\$0.80	\$0.79	\$0.73	\$0.87	-8.1	-7.3	-0.9	18.7
Cost of goods sold (COGS)	747,441	697,622	692,845	505,022	564,675	-7.3	-6.7	-0.7	11.8
Gross profit or (loss)	104,599	84,287	25,862	71,082	39,102	-75.3	-19.4	-69.3	-45.0
SG&A expenses	33,289	32,554	34,432	25,958	24,200	3.4	-2.2	5.8	-6.8
Operating income or (loss)	71,310	51,733	(8,570)	45,124	14,902	(2)	-27.5	(2)	-67.0
Capital expenditures	47,807	12,017	13,052	11,462	14,386	-72.7	-74.9	8.6	25.5
Unit COGS	\$0.76	\$0.72	\$0.77	\$0.64	\$0.81	0.9	-5.7	7.1	26.7
Unit SG&A expenses	\$0.03	\$0.03	\$0.04	\$0.03	\$0.03	12.6	-1.2	14.0	5.6
Unit operating income or (loss) ..	\$0.07	\$0.05	(\$0.01)	\$0.06	\$0.02	(2)	-26.7	(2)	-62.6
COGS/sales (1)	87.7	89.2	96.4	87.7	93.5	8.7	1.5	7.2	5.9
Operating income or (loss)/ sales (1)	8.4	6.6	(1.2)	7.8	2.5	-9.6	-1.8	-7.8	-5.4
Non-toll operations									
* * * * *									
Tolling operations									
* * * * *									

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

(2) Undefined.

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

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

Table C-4A

Certain orange juice: Summary financial data concerning the U.S. market (excluding *), fiscal years 2002 - 2004, January-September 2004, and January-September 2005**

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Table C-4B

Certain orange juice: Summary financial data concerning the U.S. market (excluding *), fiscal years 2002 - 2004, January-September 2004, and January-September 2005**

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Table C-5

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

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APPENDIX D
COMMENTS REGARDING LIKE PRODUCT FACTORS

Comparability of FCOJM and NFCOJ	
Characteristics and uses	
Growers	
***	--
***	---
***	---
***	---
***	---
***	Cannot comment, sell to vendor.
***	Do not know.
***	Do not differentiate.
***	FCOJM is typically reconstituted with water after storage, heated more aggressively. After storage both products are sold to the consumer as ready-to-serve product.
***	I sell my fruit to handler and do not distinguish between FCOJM and NFCOJ.
***	I cannot distinguish between FCOJM and NFC usage.
***	N/A
***	No differences.
***	No distinction.
***	No knowledge
***	No difference.
***	Not applicable.
***	Oranges for FCOJ or NFCOJ have the same perceived characteristics.
***	Oranges grown for NFCOJ and FCOJM are identical.
***	Oranges differ based upon maturity and type (i.e. valencia, hamlin) as the season progresses. All oranges generally can make NFC or FCOJ.
***	Oranges can be used for FCOJM or NFCOJ.
***	Oranges grown for NFCOJ and FCOJM are identical.
***	Physical characteristics are the same.
***	Same for both.
***	Same oranges are used to produce NFC and FCOJ.
***	Same.
***	Sold for cash - no way of knowing the difference.
***	The grower makes no distinction in the grower process as to whether or not the fruit will be used by a processor to make FCOJM or NFCOJ. This is the processor's decision based on market demand and the processors physical assets and capabilities to make and store the two products.
***	The trailer load of orange can go both FCOJ or NFC.

***	There are no identifiable differences.
***	There are no differences between oranges for FCOJM and NFCOJ.
***	There is no distinction in characteristics as oranges are grown and harvested without anticipation of final product form.
***	There is no difference between oranges used for FCOJM and oranges used for NFCOJ.
***	They are the same.
***	We are not aware of any differences.
Processors	
***	Both are 100 percent pure juice, but they exist in different degrees of concentration/brix. Both products typically are packaged as single strength OJ in the chilled retail sections (FCOJM is reconstituted to single strength and sold as refrigerated reconstituted OJ).
***	End uses are similar. Difference is in the concentration of sugar (brix). FCOJM is 65-66 brix, NFC is 11.0 - 12.5 brix.
***	FCOJM must add water to create a ready-to-drink product. NFCOJ in a ready-to-drink state. NFCOJ has not been run through an evaporating process, but is pasteurized. FCOJM has been run through an evaporating process.
***	FCOJM and NFCOJ are forms of juice each obtained from the fruit of an orange. Oranges ripen on a tree and are picked at maturity and loaded on truck trailers for delivery to a citrus processor. Truck trailer loads of oranges are offloaded to fruit bins and are sized into compartments/fruit bins. The orange fruit is graded, cleaned by water washes and moved to an extraction process and then to a finishing process for removal of fine "rag" seed and extraneous matter. Then the juice is slated for one of two processes pasteurization (NFCOJ) or evaporation (FCOJM).
***	FCOJM is condensed form, due to removal of water (concentrated). NFCOJ is single strength form. Both are consumed in similar end forms.
***	FCOJM used in reconstituted products or shipped in bulk to dairies. NFCOJ packed in consumer packages. NFC higher quality than FCOJM
***	*** does not produce NFCOJ.
***	FCOJ, which is concentrated, can be stored @ 18 degrees F for numerous years without any flavor degradation. This brix level is pumpable when frozen, viscous, does not require sterile environment, low water content eliminates micro growth. After concentration product is concentrated and frozen. Concentrated juice at 66 degrees brix is pumpable when frozen, viscous, does not require sterile environment, low water content eliminates micro growth. Uses: Frozen 42 degree Brix retail, reconstituted retail, 50-65 degree dispenser packs, various blends, and fruit drink and soda base. NFC - characteristics: Solid when frozen, unstable (micro) if not frozen in clean environment, stable in sterile environment. Low viscosity @ 10-12 degree Brix. Uses: Stand alone retail premium juice, short shelf-life.
***	In terms of characteristics, FCOJ is, as its name states, frozen and concentrated, and it must be thawed and then mixed with water in order to be consumed. NFC is consumable as is. As for uses, NFCOJ has a single use - to be further packaged into Ready To Serve package and sold as a single strength juice.
***	NFC product has a clean, fresh flavor that is used in higher quality beverages. FCOJ can be used in frozen cans, reconstituted orange juice or beverage blends.
***	The brix level of FCOJM is typically 65 degrees while NFCOJ is typically in a range of 11 to 13 degrees brix. FCOJM much be diluted with water to provide consumers a single strength juice product. NFCOJ requires no dilution. FCOJM is widely used in fruit drink and beverages bases. NFCOJ is rarely used in drinks and beverages.
***	The end use of each product is SSOJ.

Importers	
***	Both have the character of orange juice since they are produced from the same types of oranges. Also, they have the same ultimate use as a ready-to-drink orange juice or other consumer beverage.
***	End uses are similar. Difference is in the concentration of sugar (brix). FCOJM is 65-66 brix, NFC is 11.0 - 12.5 brix.
***	FCOJ, which is concentrated, can be stored @ 18 degrees F for numerous years without any flavor degradation. This brix level is pumpable when frozen, viscous, does not require sterile environment, low water content eliminates micro growth. After concentration product is concentrated and frozen. Concentrated juice at 66 degrees brix is. Uses: Frozen 42 degree Brix retail, reconstituted retail, 50-65 degree dispenser packs, various blends, and fruit drink and soda base. NFC - characteristics: Solid when frozen, unstable (micro) if not frozen in clean environment, stable in sterile environment. Low viscosity @ 10-12 degree Brix. Soft extraction required to minimize oil content. Product is pasteurized and stored in a capital intensive aseptic environment or block frozen in clean environment, stable in sterile environment. Low viscosity @ 10-12 degree Brix. Uses: Stand alone retail premium juice, short shelf-life.
***	FCOJM and NFCOJ are forms of juice each obtained from the fruit of an orange. Oranges ripen on a tree and are picked at maturity and loaded on truck trailers for delivery to a citrus processor. Truck trailer loads of oranges are offloaded to fruit bins and are sized into compartments/fruit bins. The orange fruit is graded, cleaned by water washes and moved to an extraction process and then to a finishing process for removal of fine "rag" seed and extraneous matter. Then the juice is slated for one of two processes pasteurization (NFCOJ) or evaporation (FCOJM).
***	In terms of characteristics, FCOJ is, as its name states, frozen and concentrated, and it must be thawed and then mixed with water in order to be consumed. NFC is consumable as is. As for uses, NFCOJ has a single use - to be further packaged into a Ready To Serve package and sold as a single strength juice.
***	NFCOJM is single strength juice product that is typically sold "as is" for consumer use as a ready-to-serve beverage. FCOJM is a frozen, concentrated product that requires the addition of water at some point in its utilization and can be used as a blending ingredient in multi-fruit flavored beverages and as a product for use in food service/institutional dispensaries.
***	Similarity - derives from an orange. Difference - NFCOJ is never evaporated, never frozen; highly susceptible to contamination.
***	We import FCOJM only. The ultra low pulp consists of less than 1% pulp and is only used to produce soft drink beverage concentrates. The regular FCOJM consists of more than 6% but less than 12% pulp and used to make juice concentrates. Regular pulp cannot be used to make soft drink concentrates because the ingredient would negatively affect the clarity and taste of the beverage.
Purchasers	
***	Both have very similar characteristics. FCOJM is less costly to transport and store.
***	Different taste, different customers.
***	FCOJ, which is concentrated, can be stored at 18 degrees F for numerous years with out any flavor degradation. This brix level is pumpable when frozen, viscous, does not require sterile environment, low water content eliminates micro growth. Uses: Frozen 42 degree brix retail, reconstituted retail, 50-65 degree dispenser packs, various blends, and fruit drink and soda base. NFC-Characteristics: solid when frozen, unstable (micro) if not frozen in clean environment, stable in sterile environment. Low viscosity @10-12 degree brix. Uses: Stand alone retail premium juice; short shelf life.
***	FCOJM is received at 65 brix whereas NFCOJ would be around the 12 brix range. As a result, storage for NFC requires about 5 times the space and it is more susceptible to microbial contamination because of its higher water activity. Our plants cannot accommodate the requirements for storage and processing of NFCOJ. NFC typically has a fresher, better taste than reconstituted OJ made from FCOJM.
***	FCOJM and NFCOJ have identical end uses: as ready to drink orange juice. Both are produced from mature round oranges. The oranges constitute a significant portion of the cost and composition of both products. Both have the same essential nutrients and flavors required by the final orange juice product. Both require blending in the production of the final orange juice product.

***	FCOJM- 3+1 concentrate and single strength. NFCOJ- retail single strength.
***	In terms of characteristics, FCOJ, is as its name states, frozen and concentrated and it must be thawed and then mixed with water in order to be consumed. NFC is consumable as is. As for uses, NFCOJ has a single use- to be further packaged into a Ready To Serve package and sold as a single strength juice.
***	NFC and FCOJ are a single strength juice after reconstitution. US grade A, brix and ratio, and physical appearance are similar.
***	NFC stand alone, FCOJ use for blends.
***	NFC would taste better. End uses are same.
***	NFCOJ can only be used as single strength orange juice products. Because of this we only use FCOJM.
***	NFCOJ is a premium product with a fresher taste.
***	No difference.
***	No difference.
***	Organic NFCOJ is most used and packed in retail refrigerated cartons. Organic FCOJM is used to produce retail refrigerated OJ and FCOJR. There may be other minor end uses unknown to me. *** uses only organic FCOJM to produce FCOJR. NFCOJ is generally assumed to have superior flavor to the consumer.
***	Similar product profiles but reconstitution of FCOJM could favor NFCOJ for flavor, product consistency and appearance.
***	Similar.
***	Similar.
***	The brix level of FCOJM is typically 65 degrees while NFCOJ is typically in a range of 11 to 13 degrees brix. FCOJM must be diluted with water to provide consumers a single strength juice product. NFCOJ requires no dilution. FCOJM is widely used in fruit drink and beverage bases. NFCOJ is rarely used for drinks and beverages.
***	There are numerous similarities because they are both orange juice, but NFCOJ has a fresher flavor and aroma.
Interchangeability	
Growers	
***	--
***	---
***	---
***	---
***	---
***	---
***	---
***	100% interchangeable.
***	All fruit used for NFCOJ and FCOJM can be used interchangeably.
***	All varieties of oranges are interchangeable.
***	Cannot comment, sell to vendor.
***	Completely interchangeable.
***	Do not differentiate.
***	Do not know.

***	Fully interchangeable - ultimately ending up as SSOJ.
***	I sell my fruit to handler and do not distinguish between FCOJM and NFCOJ.
***	I do not know of any reason that fruit is not useable for both FCOJM & NFC interchangeably.
***	Most juice is now sold refrigerated, as ready to serve product.
***	N/A
***	No difference.
***	No knowledge.
***	Not applicable.
***	Oranges for FCOJ or NFCOJ are interchangeable.
***	Oranges for FCOJM and oranges for NFCOJ are interchangeable.
***	Oranges can be used for FCOJM or NFCOJ.
***	Same oranges make both products.
***	Same.
***	The large plants decide if the load will go FCOJ or NFC.
***	There are no differences between oranges for FCOJM and NFCOJ.
***	There are no identifiable differences.
***	They are interchangeable.
***	We are not aware of any differences.
***	While still a piece of fruit there is a complete interchangeability as to which product the fruit becomes. After it becomes FCOJM it cannot be converted to NFCOJ although NFCOJ can be converted to FCOJM.
***	Yes, generally without constraint providing minimum specifications are met (maturity related). Some customers have unique specs.
Processors	
***	Both products end up as single strength orange juice.
***	Certain customers require only U.S. or Florida orange solids and declare it on the label. Otherwise, U.S. and Brazil and other countries orange juice are interchangeable.
***	FCOJM and NFCOJ as forms of orange juice indicated above are essentially interchangeable in producing a "Ready-Ta-Drink." The two forms are interchangeable as capable of producing ready-to-drink orange juice as NFC or Reconstituted juice. Both types in their bulk form require further processing to be made ready to drink by the consumer.
***	FCOJM and NFCOJ can be interchanged once FCOJM has been diluted to single strength orange juice.
***	FCOJM and NFCOJ are not interchangeable. USDA Grade A standards have different requirements for FCOJM and NFCOJ. The U.S. Food and Drug Administration has different standards of identity for the two commodities. The New York Board of Trade provides a futures exchange for FCOJM. None exists for NFCOJ.
***	*** does not produce NFCOJ.
***	NFCOJM has but a single use, detailed above. FCOJM can be used in a number of other ways.
***	On an "as is" basis, they are not interchangeable.

***	The two products are not interchangeable due to specific end use and value as well as labeling (FDA Standard of Identity). Value distinction driven by huge difference in handling/storage cost and technology required. NFC requires more specific raw material (fruit) selection than FCOJ.
***	The products would have a difficult time being interchangeable in their end use. This is primarily due to the labeling and taste differences between NFCOJ and FCOJ.
***	They are readily interchangeable in that both products can be packaged into single strength, ready-to-serve juice. Once concentrated, however, juice cannot be sold/labeled as NFCOJ. NFCOJ could be processed into FCOJM.
***	They are not interchangeable.
Importers	
***	Basically not interchangeable.
***	FCOJM and NFCOJ are interchangeable from a nutrition, composition, and use perspective.
***	NFCOJ can be reprocessed into FCOJM, but this is often undesirable. The perceived quality differences and the differences in price between the respective products limit the opportunities for interchangeability.
***	FCOJM and NFCOJ as forms of orange juice indicated above are essentially interchangeable in producing a "Ready-Ta-Drink." The two forms are interchangeable as capable of producer ready-to-drink orange juice either as NFC or Reconstituted juice. Both types in their bulk form require further processing to be made ready to drink by the consumer.
***	NFCOJM has but a single use, detailed above. FCOJM can be used in a number of other ways.
***	On an "as is" basis, they are not interchangeable.
***	The two products are not interchangeable due to specific end use and value as well as labeling (FDA Standard of Identity). Value distinction driven by huge difference in handling/storage cost and technology required. NFC requires more specific raw material (fruit) selection than FCOJ.
***	These two ingredients are not interchangeable. The FCOJM ultra low pulp is used exclusively in juice concentrates and cannot be substituted. Ultra low pulp FCOJM has unique properties that limits its use to soft drink production. Ultra low pulp is not heat treated, as FCOJM for reconstitution are, but instead has been rendered shelf-stable by the addition of significant quantities of preservatives and sodium benzoate.
Purchasers	
***	At single strength, they are interchangeable in use.
***	Both can be used in our process.
***	By definition NFC is Not from Concentrate and if marketed cannot be interchanged with FCOJM. NFC is used nearly exclusively for NFC marketed product. Concentrate is used for reconstituted single strength juice and for frozen concentrate for retail sale.
***	Consumer will pay more for NFCOJ as it has not been processed with water.
***	FCOJM and NFC are interchangeable in their end uses as juice beverages, but NFC is widely considered to be a superior product because of its taste. Reconstituted juice from FCOJM is often sold at a discount to NFCOJ.
***	FCOJM and NFCOJ are not interchangeable. USDA Grade A standards have different requirements for FCOJM and NFCOJ. The FDA has different standards of identity for the two commodities. The New York Board of Trade provides a futures exchange for FCOJM. None exists for NFCOJ.
***	For ***'s use, FCOJM and NFCOJ are not interchangeable.
***	From a nutritional perspective, the products should be interchangeable.
***	In general, they are not interchangeable due to customer specifications and price.
***	NFC has but a single use, detailed above. FCOJM can be used in a number of other ways

***	NFC to some consumers is perceived as "fresher" or higher quality.
***	NFC is considered a premium juice.
***	NFCOJ cannot be used in OJ bases and concentrates. We must use FCOJM because these products are 3+1 and 4+1.
***	No difference.
***	Not interchangeable.
***	Not interchangeable.
***	Not for our purposes.
***	<p>Physically, FCOJM and NFCOJ are interchangeable because they are both products that are produced from mature round oranges. Indeed, *** contracts directly with growers to produce the fruit for its FCOJM and NFCOJ products and does not use different growers for the different juices. In other words, a round orange can be processed into FCOJM or NFCOJ. Further, *** receives both FCOJM and NFCOJ from the same processors. *** directs the processor as to the quantity of FCOJM and NFCOJ that it needs, and that ratio can vary significantly depending on ***'s needs.</p> <p>There may be other, non-physical limitations on the interchangeability of FCOJM and NFCOJ, such as the labeling requirements of the FDA, the need to re-tool manufacturing equipment to further manufacture the different orange juices, or storage limitations. The labeling requirements of the FDA do not allow FCOJM to be substituted for NFCOJ in the manufacturing of pasteurized orange juice with indicating such information on the label, although notably the reverse is not true; there are no labeling requirements which require a label declaration to substitute NFCOJ for a portion of FCOJM in the manufacturing of orange juice. In that regard, NFCOJ is completely interchangeable with FCOJM in the manufacturing of orange juice from concentrate.</p> <p>When making orange juice containing beverages not defined in the Code of Federal Regulations by the FDA, the beverage manufacturer can use either FCOJM or NFCOJ at its discretion with proper labeling.</p>
***	Retail refrigerated cartons: functionally they are interchangeable. However, label declarations must identify whether certain orange juice is NFCOJ or FCOJM. *** can use only organic FCOJM in its products.
***	Single strength applications.
***	The two products are not interchangeable due to specific end use and value as well as labeling (FDA standard of identity). Value distinction driven by huge difference in handling/storage cost and technology required. NFC requires more specific raw material (fruit) selection than FCOJ.
Manufacturing processes	
Growers	
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***	Any orange may be subjected to either manufacturing process.
***	As a grower I would have no knowledge of differences.

***	Cannot comment, sell to vendor.
***	Do not know.
***	Do not differentiate.
***	I sell my fruit to handler and do not distinguish between FCOJM and NFCOJ.
***	I cannot dictate product usage between manufacturing processes. That is controlled by processing plants and their management.
***	It is the same trailer, same picker, same grades, same machinery.
***	N/A
***	N/A
***	NFC and FCOJM are stored differently to aid in storage and distribution. Storage space is limited for NFC due to space requirements.
***	No difference.
***	No knowledge.
***	Not familiar with manufacturing processes.
***	Not qualified to make the distinction.
***	Not applicable.
***	Oranges can go through either NFCOJ or FCOJ manufacturing process.
***	Oranges for FCOJM and NFCOJ are grown and harvested in the same manner.
***	Production inputs are indifferent as to final product form.
***	Same through juice extraction. After juice extraction, FCOJM is made by evaporating water from juice and product is stored in a frozen state; NFCOJ is made by pasteurizing the extracted juice and product is stored aseptically under refrigeration.
***	Similar other than FCOJ is evaporated and stored frozen. NFC is pasteurized and stored above freezing.
***	The manufacturing process is identical up to the point where some juice is directed to the evaporator for concentrating and some is taken from holding tanks and pasteurized.
***	There are no identifiable differences.
***	There are no differences between oranges for FCOJM and NFCOJ.
***	We grow oranges for NFC identically to oranges for FCOJ.
***	We are not aware of any differences.
Processors	
***	After extraction and finishing, FCOJ is evaporated then sent to frozen bulk storage. NFC is centrifuged, then pasteurized or sterilized, then stored in frozen drums or aseptic environment.
***	Both products use the same raw material (fruit) inputs. The FCOJM runs through an evaporator after fruit is squeezed, chilled and stored. NFCOJ is pasteurized after fruit is squeezed, chilled and stored.
***	FCOJM has a great degree of the water evaporated out of it and can be stored at as high as 25 or 30 degrees F without having to be kept in an "aseptic" environment. NFC must be pasteurized ("flash heated") in order to reduce bacteria and permit it to be sold.
***	FCOJM goes through a concentration process and NFC is simply pasteurized.

***	Fruit receiving, grading, extraction and finishing are essentially identical, and can be accomplished using the same equipment. NFCOJ is pasteurized while FCOJM is concentrated in an evaporator. FCOJM is stored in bulk tank farms. NFCOJ is commonly stored in bulk aseptic tanks.
***	*** does not produce NFCOJ.
***	Manufacturing processes for FCOJM and NFCOJ are different. Following extraction, FCOJM requires evaporation to the desired brix level. It will later be diluted with water and/or other juices to produce reconstituted juices, drinks, or beverages. Following extraction, NFCOJ is typically pasteurized, chilled and stored until packaging for sale as an undiluted 100 percent orange juice product.
***	Orange fruit juice that is destined for NFC once squeezed or "extracted" will be pasteurized (flash heated to 180 degrees), then rapidly cooled to just above freezing and then it can be stored at near freezing, or frozen, or directed immediately to a filling process. Orange fruit juice that is destined for FCOJ after it is squeezed or "extracted" will be evaporated to a higher concentration and then stored in a concentrate tank farm at below freezing or stored in drums at below freezing until needed for further processing in the development of finished goods.
***	Same employees and equipment do both other than FCOJM goes through an evaporator and NFCOJ goes through a pasteurizer.
***	Same extraction process is used; however, the difference is the use of evaporation to remove water versus pasteurization to reduce microbiology counts.
***	The two products are produced in a similar fashion. NFC product does not go through the evaporator and there are also some differences in the finishing of the product (extractors/finishers are more open on NFC production to avoid off flavors).
***	The manufacturing process is the same with regard to extraction. Heat is used to pasteurize NFCOJ and to evaporate SSOJ into concentrate.
Importers	
***	After extraction and finishing, FCOJ is evaporated then sent to frozen bulk storage. NFC is centrifuged, then pasteurized or sterilized, then stored in frozen drums or in an aseptic environment.
***	Both are manufactured from the same type of mature round oranges and undergo similar processes through the extractor and filter lines. At that point, different manufacturing processes are used to produce beverage from FCOJM and NFC.
***	FCOJM and NFC are manufactured using mostly the same processes, production lines, equipment and employees. Orange fruit juice that is destined for NFC once squeezed or "extracted" will be pasteurized (flash heated to 180 degrees), then rapidly cooled to just above freezing and then it can be stored at near freezing, or frozen, or directed immediately to a filling process. Orange fruit juice that is destined for FCOJ after it is squeezed or "extracted" will be evaporated to a higher concentration and then stored in a concentrate tank farm at below freezing or stored in drums at below freezing until needed for further processing in the development of finished goods.
***	FCOJM has a great degree of the water evaporated out of it and can be stored at as high as 25 or 30 degrees F without having to be kept in an "aseptic" environment. NFC must be pasteurized ("flash heated") in order to reduce bacteria and permit it to be sold.
***	FCOJM goes through a concentration process and NFC is simply pasteurized.
***	Similarity - derives from an orange. Difference - NFCOJ is never evaporated, never frozen; highly susceptible to contamination.
***	The production of NFCOJ and FCOJM both involve the following steps: fruit reception, extraction, and clarification. NFCOJ is then processed as single strength product and may be pasteurized before storage. FCOJM on the other hand, is evaporated to a desired concentration and may be blended in order to maintain a given standard of quality.
***	Ultra low pulp FCOJM is produced by a unique manufacturing process. Only one plant in the world produces this product to Pepsi Co's specifications. The process involves the use of specialized pumps, tanks, centrifuges and control systems to affect the pulp separation. There is no economic incentive for other producers to invest in the equipment necessary given demand for this ingredient.

Purchasers	
***	After extraction and finishing, FCOJ is evaporated then sent to frozen bulk storage. NFC is centrifuged, then pasteurized or sterilized, then stored in drums or in aseptic environment.
***	All similar process other than adding back water to FCOJM.
***	Comparable.
***	FCOJM and NFCOJ share manufacturing processes, production lines, equipment, and employees. Both FCOJM and NFCOJ start the manufacturing process from the same mature round oranges. Both processes require the oranges to go through an extractor line which squeezes the juice from the oranges and then filters and separates that juice to remove seeds, pulp, certain oils, etc. At that point, the processes differ. FCOJM goes through an evaporation step where water is removed from the orange solids. The remaining product is then partially frozen. NFCOJ is flash pasteurized and then aseptically handled under refrigeration. NFCOJ can also be frozen into non-concentrated blocks for storage. As noted above, TCCC can receive both FCOJM and NFCOJ from the same processor. *** directs the processor as to the ratio of FCOJM and NFCOJ that it needs.
***	FCOJM has a great degree of the water evaporated out of it and can be stored at as high as 25 or 30 degrees F w/out having to be kept in an "aseptic" environment. NFC must be pasteurized ("flash heated") in order to reduce bacteria and permit it to be sold.
***	FCOJM requires considerably more manufacturing and energy use due to the evaporation process. Because considerable water is removed FCOJ in the concentration process, FCOJ has lower storage, handling, shipping costs per pound of soluble solid than NFCOJ. Often, because NFCOJ has higher costs in storage/shipping processing and packaging operation are in close proximity. For the same reasons, NFCOJ is not economic to ship long distances.
***	FCOJM- in our processes, we have no juice storage capacity except holding tanks for processing. As juice is pumped out of a tanker, it is blended with a water stream and pumped into blend tanks. The brix is adjusted and any additives are added (such as calcium fortification). It is then heat-treated and cooled, and filled into *** bottles. NFCOJ- We do not purchase NFCOJ, so specific manufacturing differences are unknown/unsure. There are some similarities with FCOJM with respect to some equipment and labor; however, it is our understanding that NFC requires aseptic storage, handling and filling, which is markedly different from the process for reconstituting FCOJM.
***	If we were to use NFCOJ, we would require additional storage capacity and much more frequent delivery of NFCOJ vs. FCOJM.
***	Main difference is the FCOJM goes through an evaporation process. Very expensive process and heating will effect flavor. Equipment very expensive.
***	Manufacturing processes for FCOJM and NFCOJ are different. Following extraction, FCOJM requires evaporation to desired brix level. It will later be diluted with water and/or other juices to produce reconstituted juices, drinks or beverages. Following extraction, NFCOJ is typically pasteurized, chilled and stored until packaging for sale as an undiluted 100% orange juice product.
***	NFC more difficult.
***	NFCOJ tankers are produced as received. FCOJ tankers are put into a silo. Therefore, keeping production separate.
***	No knowledge of processes.
***	Same.
***	The first stage of manufacturing process for FCOJM and NFCOJ are the same and are described below: harvest, delivery to factory, unloading, fruit grading, fruit washing, 2nd fruit grading, fruit sizing, juice extraction, juice finishing (remove excess pulp and fruit material). In the case of NFCOJ, the finished juice is pasteurized, chilled, and stored in bulk aseptic tanks until transported for bottling. In the case of FCOJM the finished juice undergoes evaporation, chilling, and is stored in refrigerated bulk storage tanks.

***	The production processes of SSOJ from FCOJM and NFCOJ are nearly the same except FCOJM must be reconstituted before pasteurization.
***	The manufacturing process is very similar except that FCOJM requires the addition of water to bring to 11.8 brix. Inputs are the same.
***	Very similar. We would pasteurize both but only reconstitute FCOJ.
Channels of distribution	
Growers	
***	--
***	---
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***	---
***	Any orange could go through any distribution channel.
***	As a grower, I harvest & deliver identical oranges for NFC and FCOJ.
***	Both sold in retail outlets as similar ready-to-serve products.
***	Cannot comment, sell to vendor.
***	Channel of distribution is indifferent as to final product form.
***	Do not know.
***	Do not differentiate.
***	Do not know.
***	I sell my fruit to handler and do not distinguish between FCOJM and NFCOJ.
***	I have no control over distribution channels or sells based on distribution market situations.
***	N/A
***	N/A
***	No distinction.
***	No knowledge.
***	No difference.
***	Not applicable.
***	Not familiar with channels of distribution.
***	Not qualified to make the distinction.
***	Oranges can be sold for FCOJ or NFCOJ equally.
***	Same for both.

***	Same plants buy for NFC are also buying FCOJ.
***	Similar - generally sold in bulk truck loads for packaging and then distribution in some form at retail sales.
***	The channels of distribution are the same.
***	The channels of distribution are similar.
***	There are no differences between oranges for FCOJM and NFCOJ.
***	There are no identifiable differences.
***	We are not aware of any differences.
Processors	
***	Both FCOJM and NFCOJ use the same channels of distribution. The product forms are single strength FCOJ, single strength NFCOJ or orange concentrate FCOJ.
***	Essentially the same. The major brands produce and distribute both forms. Many dairies and bottlers package NFCOJ and FCOJM as well.
***	FCOJ is shipped in drums or in bulk (in tankers) and stored in refrigerated warehouse or tank farms where it can be stored for very long periods of time. NFC requires specialized transportation and storage equipment which cannot be used for FCOJ.
***	FCOJ - supplier- Brand or Regional packager as frozen raw material reconstitutes and packs close to end user retail/institutional market. NFC - Packaged by Regional or brand marketer as close to the fruit processing as is practical, then shipped via truck/rail to end user in chilled environment, minimal HRI distribution channels.
***	Geographically, the distribution channels for both FCOJM and NFCOJ are essentially the same given that they are both orange juice sold in like outlets.
***	*** does not produce NFCOJ.
***	NFCOJ sold nationwide and Canada. FCOJM sold regionally where freight rates allow us to be competitive.
***	NFCOJ is distributed through the retail grocery chains. A small percentage (5 percent) is distributed through institutional food service companies in the retail package.
***	Products are typically sold as an industrial ingredient to consumer packaged companies. Most domestic sales are direct with minimal participation by brokers.
***	Products are sold to both Brand and Private Label retail foodservice customers.
***	Similar.
***	Storage nodes for FCOJM and NFCOJ can be very different. FCOJM is typically stored in bulk tanks or drums. NFCOJ must be stored in aseptic conditions requiring specially designed tanks. FCOJM is shipped to various blending and packaging locations where it is diluted with water prior to packaging. NFCOJ is typically packaged where it is produced.
***	We market and sell FCOJM and NFCOJ in the same manner and through the same channels.
Importers	
***	FCOJ is shipped in drums or in bulk (in tankers) and stored in refrigerated warehouse or tank farms where it can be stored for very long periods of time. NFC requires specialized transportation and storage equipment which cannot be used for FCOJ.
***	FCOJ - supplier- Brand or Regional packager as frozen raw material reconstitutes and packs close to end user retail/institutional market. NFC - Packaged by Regional or Brand marketer as close to the fruit processing as is practical, then shipped via truck/rail to end user in chilled environment, minimal HRI distribution channels.
***	FCOJM and NFC are distributed through the same channels of distribution.

***	Geographically, the distribution channels for both FCOJM and NFCOJ are essentially the same given that they are both orange juice sold in like outlets.
***	Most of FCOJM imported from Brazil is sold to U.S. FCOJM producers for blending purposes, and therefore, moves through different channels of trade than is the case with NFCOJ.
***	NFCOJ requires separate and more technically advanced equipment for storage, and movement from one location to another.
***	Similar.
***	Soft drink beverage concentrates containing the ultra low pulp FCOJM are only to bottlers that produce soft drinks. These distribution channels are different from sales of FCOJM for juice concentrates.
Purchasers	
***	As a bulk product the distribution channels are the same usually in tanker truck or in drums. As not involved in end use distribution we are not familiar with the particular requirements.
***	Both products are sold in retail, while FCOJM products usually predominate in food service.
***	Comparable.
***	FCOJ has many more.
***	FCOJ is shipped in drums or in bulk (in tankers) and stored in refrigerated warehouses or tank farms where it can be stored for very long periods of time. NFC requires specialized transportation and storage equipment which cannot be used for FCOJ.
***	FCOJ- Supplier -> Brand or Regional packager as frozen raw material reconstitutes and packs close to end user retail/institutional market. NFC- Packaged by regional or brand marketer as close to the fruit as is practical, then shipped via truck/rail to end user in chilled environment, minimal HRI distribution channels.
***	FCOJM- food service distribution. NFCOJ- specialty distribution, retail, dairies.
***	Identical for end products of reconstituted juice made from FCOJM and NFC; each requires refrigeration throughout its supply chain and shelf life. Most end products made from both juice types are sold in 1/2 gallon paper or plastic containers but other size options are also offered.
***	NFCOJ and FCOJR in comparison: NFCOJ and other SSE retail carton orange juice distribute orange juice via dairy distribution and other refrigerated channels. *** organic FCOJR is distributed via other frozen products. NFCOJ and FCOJR tend to be managed as separate categories by different buyers in the retail channel.
***	No difference.
***	Our products go through distributors and directly to retailers for distribution and resale.
***	Product is in different cartons, specifying NFC or FCOJ.
***	Same.
***	Same.
***	Similar. Per pound solids FCOJM moves for much less money.
***	SSOJ produced by *** from FCOJM and NFCOJ are distributed in the same manner. SSOJ from NFCOJ has a longer shelf life than from FCOJM.
***	Storage modes for FCOJM and NFCOJ can be very different. FCOJM is typically stored in bulk tanks or drums. NFCOJ must be stored in aseptic conditions requiring specially designed tanks. FCOJM is shipped to various blending packaging locations where it is diluted with water prior to packaging. NFCOJM is typically packaged where it is produced.
***	*** ships its final from-FCOJM and from-NFCOJ products to industrial and retail consumers in the same channels of distribution, often on the same vehicle. *** receives both FCOJM and NFCOJ from the same channels of distribution. That is, FCOJM and NFCOJ delivered in bulk form from the processor (or its agent).

***	The same. We are direct delivery to the stores.
***	Traditional grocery, retail and other outlets.
***	Transportation of NFCOJ represents a significant premium compared to FCOJ.
Customer and producer perception	
Growers	
***	--
***	---
***	---
***	---
***	---
***	---
***	---
***	---
***	---
***	---
***	Cannot comment, sell to vendor.
***	Customer and producer perceptions are not driven by the orange fruit, but by the difference in the manufacturing process, packaging, and distribution.
***	Customers perceive and purchase both products as single strength orange juice, ready to consume, with only limited distinction in taste between the finished NFC made from NFCOJ and reconstituted OJ made from FCOJM. Producers perceive FCOJM as identical to NFCOJ except for the greater handling and storage cost of the juice, which is not concentrated, some of which costs must be passed through to the retail level.
***	Customers perceive and purchase both products as single strength orange juice, ready to consume, with only limited distinction in taste between the finished NFC made from NFCOJ and reconstituted OJ made from FCOJM. Producers perceive FCOJM as identical to NFCOJ except for the greater handling and storage cost of the juice which is not concentrated, some of which costs must be passed through to the retail level.
***	Do not differentiate.
***	Do not know.
***	I sell my fruit to handler and do not distinguish between FCOJM and NFCOJ.
***	I cannot control or determine customer perceptions of NFC vs FCOJ due to my having no control over marketing, QC, or market access.
***	N/A
***	NFC perceived as a premium product due to brand advertising. Growers have no control over which product his fruit is used for.
***	No difference perceived in oranges purchased for FCOJM and NFCOJ.
***	No knowledge.
***	No differences.
***	No difference.
***	No difference between the two oranges.
***	No distinction.

***	No difference.
***	Not applicable.
***	Not qualified to make the distinction.
***	Orange are perceived equal between FCOJ and NFCOJ.
***	Oranges are the same.
***	Same.
***	There are no differences between oranges for FCOJM and NFCOJ.
***	There are no identifiable differences.
***	There are no differences in customer and producer perceptions.
***	We are not aware of any differences.
Processors	
***	Both are similar with exception of convenience. FCOJM must be reconstituted as compared to NFCOJ ready to serve.
***	Consumer recognized and pays for distinct, superior flavor/quality of NFC over FCOJ products. It is manufactured, promoted and sold as a separate and distinct product.
***	Consumer's perceive that "NFC: - by its very name - is different from concentrate. (And, by implication, a great number of them believe that it "NOT From Concentrate" is not only a different product, but a better one. In recent years demand for NFC has increased significantly, while demand for FCOJ has dropped.
***	Customers view NFC as a premium product.
***	Generally our customers are broker/distributors who view both commodities as receipt of wholesale products destined for a retail outlet. The same is true for all bulk customers who typically will be either re-packaging or further manufacturing the wholesale product we sell them. Ultimately the final use for our product is drinkable orange juice in similar containers for both commodities with labeling Not from Concentrate or From Concentrate.
***	*** does not produce NFCOJ.
***	In the Northeast in particular, NFCOJ is perceived as a higher quality product and closer to fresh juice. In other regions of the country, especially in the Midwest, juice sold in the refrigerator case is generally viewed as having equal quality.
***	Most customers prefer NFC for their applications. NFC is perceived as "fresher" and more clean (no cooked flavor notes). FCOJ has a good market for those who need a freight advantage.
***	NFC is viewed as fresh product but is excluded as to quality using the standards identical as reconstituted FCOJM.
***	NFCOJ more expensive but perceived by customer to be higher quality.
***	NFCOJ has the perception of being a fresh squeezed product. Quality for both NFCOJ and FCOJM are similar depending on the seasonality of the juice, availability of quality product and the accurate blending of a finished product.
***	***. Our *** two years of experience have demonstrated consumers' preference for single strength orange juice products.
Importers	
***	Consumer recognized and pays for distinct, superior flavor/quality of NFC over FCOJ products. It is manufactured, promoted and sold as a separate and distinct product.

***	Consumer's perceive that "NFC: - by its very name - is different from concentrate. (And, by implication, a great number of them believe that it "NOT From Concentrate" is non only a different product, but a better one). In recent years demand for NFC has increased significantly, while demand for FCOJ has dropped.
***	Customers view NFC as a premium product.
***	Generally our customers are broker/distributors who view both commodities as receipt of wholesale products destined for a retail outlet. The same is true for all bulk customers who typically will be either re-packaging or further manufacturing the wholesale product we sell them. Ultimately the final use for our product is drinkable orange juice in similar containers for both commodities with labeling Not from Concentrate or From Concentrate.
***	NFCOJ perceptions are higher quality; more natural freshness, premium.
***	NFCOJ is typically viewed by the U.S. consumer as a premium good, while reconstituted juice FCOJM is often regarded as a somewhat less desirable form of orange juice. As such, the production of NFCOJ is more profitable than FCOJM and is typically more highly desired by the producer.
***	*** is not aware of other U.S. importer or user of the *** FCOJM and to the best of its knowledge such a product could only be used in making *** concentrate. The only other possible purchaser of such a product would have to be *** producer.
***	We do not perceive any differences in FCOJM and NFC. A small segment of consumers perceive orange juice made from NFCOJ to have higher quality or to be fresher tasting.
Purchasers	
***	Consumers perceive that SSOJ from NFCOJ is superior in quality to that from FCOJM
***	Consumers perceive organic NFCOJ as premium to all other orange juice products. ***' FCOJR is considered a premium convenience product. Consumers generally buy NFC (flavor, freshness) and FCOJR (convenience) for different reasons. Producers perceive that oranges processed for NFCOJ must be higher quality fruit. Producers perceive NFCOJ as high cost, bulky inventory. Producers perceive that NFCOJ is not feasible to import large volumes from distant sources (Brazil, Europe).
***	Customer- premium product, more sensitive, more handling/control required. Producer- same as the above to include very labor and equipment intensive especially storage.
***	Customer recognizes and pays for distinct superior flavor/quality of NFC over FCOJ products. It is manufactured, promoted and sold as a separate distinct product.
***	Customer prefers NFC.
***	Customer's perceive that "NFC" by its very name is different from concentrate. And by implication a great number of them believe that "NOT form Concentrate" is not only a different product but a better one. In recent years, demand for NFC has increased significantly while demand for FCOJ has dropped.
***	Customers are influenced to believe that NFCOJ is a more pure product thru ads and labeling.
***	Customers of each like their particular type.
***	I believe both perceive NFC as a superior product
***	NFC as "pure" premium, and FCOJ as reconstituted.
***	NFC would be considered the premium product.
***	NFCOJ is perceived as better.
***	NFCOJ is generally perceived as higher quality.
***	NFCOJ is perceived as a superior product as compared to FCOJM because of its fresher taste. NFC is promoted and advertised to a much greater extent than FCOJM.
***	NFCOJ- perceived superior by customers.
***	NFCOJ is perceived as a superior product.
***	None.

***	*** believes that these products are comparable. Both are used to produce ready-to-drink orange juice. Although there is a segment of retail consumers who believe that NFCOJ is superior to FCOJM, *** has conducted studies that do not support that view. Specifically, retail consumers who stated that they believed NFCOJ was superior to FCOJM could not distinguish NFCOJ from FCOJM, despite the FDA's labeling requirements that require these products to be clearly labeled.
***	***. Our *** years of experience have demonstrated customers' preference for single strength orange juice products.
***	Tropicana and Minutemaide have developed the NFC market - they have a strong presence in the Northeast.
***	We would market NFCOJ as a premium product.
Price	
Growers	
***	--
***	---
***	---
***	---
***	---
***	---
***	---
***	---
***	---
***	Cannot comment, sell to vendor.
***	Do not differentiate.
***	Do not know.
***	Grower has no control over final utilization and is paid similarly no matter what the final form.
***	Grower receives no direct price difference between FCOJM and NFCOJ.
***	Growers received one price for juice oranges.
***	Growers are paid the same for oranges destined for NFC or FCOJ. Same oranges are used to produce NFC and FCOJ.
***	I understand that margins between FCOJ and NFC are greater for FCOJ due to less freight cost, processing cost.
***	I sell my fruit to handler and do not distinguish between FCOJM and NFCOJ.
***	N/A
***	No difference paid to the grower.
***	No difference.
***	No knowledge.
***	Not applicable.
***	Oranges for FCOJM and oranges for NFCOJ typically are sold for the same price. No distinction.
***	Price to the grower, No distinction.

***	Price may be higher for fruit used by a NFCOJ processor in a short supply situation where substitute concentrate from imported supplies cannot be substituted for fresh oranges as it can be for an FCOJM product.
***	Price is based on customer perception and supply and demand.
***	Pricing does not vary by product form.
***	Same for both.
***	Same.
***	The processor pays the same regardless of whether the orange is used in FCOJ or NFC.
***	The grower receives same price whether his oranges are used for FCOJM or NFCOJ.
***	There are no identifiable differences.
***	There is no difference in price for oranges that go to FCOJ or NFCOJ.
***	There are no differences between oranges for FCOJM and NFCOJ.
***	We are not aware of any differences.
Processors	
***	FCOJM - \$***/MT duty not paid, FOB Santos. NFC - \$***/MT duty not paid, FOB Santos.
***	*** does not produce NFCOJ.
***	NFC product carries a premium price over concentrated product, however much of this is attributable to the higher NFC cost to market, aseptic storage and handling along with transport costs. The price for both commodities are correlated in trends over the investigative period in relationship to the "dumping", which is the primary proof of the point that orange juice is orange juice irrespective of FCOJM versus NFCOJ.
***	NFC pricing is the main reason why customers switch to FCOJ. There is a premium between the two products and freight can be 2/3 more expensive for NFC (less pound solids per tanker). NFC is produced for the upper end of the marketplace.
***	NFC pricing is higher due to 1) incremental cost of storage and 2) higher cost of transport.
***	NFCOJ requires a premium price to FCOJM because of higher cost for storage and transportation requirements, and the consumers perception that NFC is a fresh juice. NFCOJ - Single strength orange juice vs. FCOJM - 7 strength concentrate. Raw materials (fruit) prices are the same.
***	NFCOJ demands a premium price as compared to FCOJ. This is mainly due to a larger investment in storage and transportation costs due to the water content of NFCOJ.
***	NFCOJ premium over FCOJM can range between \$.25 and \$.45 pps.
***	NFCOJ generally 15-35 percent more.
***	NFCOJM has significantly higher costs associated with the process - primarily in the necessity to store 7 plus times as many gallons for the same number of lbs solid.
***	The price of NFCOJ is typically much higher then FCOJM.
***	Unit prices of NFC storage, shipping, handling costs are six times that of FCOJ products. This translates into final end use prices in market place of as much as 2-3 times price of products from FCOJ.
Importers	
***	Any difference in price between FCOJM and NFC can be accounted for by the higher transportation and storage costs of NFC compared to FCOJM. This is because the physical volume of NFCOJ is six-seven times the equivalent FCOJM.

***	Compared with FCOJM, NFCOJ is typically the higher-priced product. The per-gallon price of NFC juice was roughly 36% higher than refrigerated reconstituted juice (FCOJM) during the 2000/01 - 2003/04 marketing years (ACNielsen).
***	FCOJM - \$***/MT duty not paid, FOB Santos. NFC - \$***/MT duty not paid, FOB Santos.
***	NFC product carries a premium price over concentrated product, however much of this is attributable to the higher NFC cost to market, aseptic storage and handling along with transport costs. The price for both commodities are correlated in trends over the investigative period in relationship to the "dumping", which is the primary proof of the point that orange juice is orange juice irrespective of FCOJM versus NFCOJ.
***	NFCOJ commands a significantly higher price than FCOJM, due to its' process freshness/natural higher quality, also its' fragility.
***	NFCOJM has significantly higher costs associated with the process - primarily in the necessity to store 7 plus times as many gallons for the same number of lbs solid. The marketers of NFCOJ have commanded a "premium" sales price at retail which partly pays for the much higher costs associated with manufacturing and selling the product.
***	Ultra low pulp and regular pulp FCOJM are priced differently.
***	Unit prices of NFC storage, shipping, handling costs are six times that of FCOJ products. This translates into final end use prices in market place of as much as 2-3 times price of products from FCOJ.
Purchasers	
***	Consumer will pay higher price for NFC, as it has not been blended with any water, just straight to processing from "all natural" juice.
***	FCOJ typically 20% cheaper.
***	I am generally aware that there is a significant premium for organic NFCOJ. However I do not regularly track NFCOJ organic pricing.
***	NFC will be more expensive PPS
***	NFC is a higher priced product- estimate 0.25 -0.50 per pound solids premium.
***	NFC will be higher, especially if shipped out of Florida.
***	NFC is sold at a premium when compared to reconstituted juice from FCOJM. The premium is about 77% higher or more at retail. For example, a 1/2 gal of OJ from concentrate may retail for \$1.69 each while a 1/2 gal of NFCOJ would sell for \$2.99 to over \$4.00, depending on the brand.
***	NFCOJ gets high retails.
***	NFCOJ is more costly to inventory and transport. It is often packaged in upscale and more costly glass decanters or high graphic paper board cartons with barrier properties and pour spouts.
***	NFCOJ higher than FCOJM products.
***	NFCOJ is expensive.
***	NFCOJ is more expensive to product, store, transport. Sales price is reflected in the bulk sale and retail unit prices. Specific details not available.
***	NFCOJ is priced higher than FCOJM.
***	Price is approximately the same. Freight could be lower on Brazilian OJ.
***	SSOJ made FCOJM typically sells at retail at a discount in the range of 20% to SSOJ from NFCOJ.
***	The starting point for both NFCOJ and FCOJM is the price of the orange itself. The cost to manufacture either product is similar. The real cost difference is that for storage and transportation. Because NFCOJ is low brix, the physical volume is 6-7 times that of FCOJM. Therefore, it costs more to store and transport NFCOJ. Nevertheless, there are times when the price of FCOJM and NFCOJ is comparable.

***	The price of NFCOJ is typically much higher than FCOJM.
***	Unit prices of NFC storage, shipping, handling costs are six times that of FCOJ products. This translates into final end use prices in market place of 2-3 times price of products form FCOJ
***	Unknown.
***	We would have to charge more for NFCOJ to cover our cost of more frequent raw ingredient delivery.
***	We currently don't use NFCOJ.
Source: Compiled from responses to Commission questionnaires.	

Comparability of Organic FCOJM and Organic NFCOJ	
Characteristics and uses	
***	Compared to non-organic product, organic FCOJM has a distinct physical composition and special applications as a health food. Organic FCOJM is not blended with other juice or used in other products. Because no chemical fertilizers are used, there are more fruit solids and more vitamin C in organic juice than nonorganic product.
***	FCOJM - \$***/MT duty not paid, 65 Brix. Required capital < \$***/box of capacity NFC - \$***/MT duty not paid, 12 Brix. Capital to install capacity just to store/handle/ship/store the necessary plant/trucks/vessels/terminal/trucks from Brazil to USA is roughly \$*** box of capacity. Required capital investment to develop a capability to store/handle/sell this product after extraction step per the market requirements is about \$***/lb solid.
***	Meets USDA grade A standards, similar in product chemistry. Impossible to visualize difference.
***	Organic NFCOJ is most used and packed in retail refrigerated cartons. Organic FCOJM is used to produce retail refrigerated OJ and FCOJR. There may be other minor end uses unknown to me. *** uses only organic FCOJM to produce FCOJR. NFCOJ is generally assumed to have superior flavor to the consumer.
***	No difference in juice.
***	Organic orange juice products may not have the same pesticide levels of non-organic juice. That is organic juice must have lower pesticide levels. There is some research indicating that organic orange juice has more flavor and more vitamin C. Organic orange juice must be certified by a USDA accredited agent. Other physical characteristics are comparable.
***	Organic juice is an extremely small niche market. *** does not participate in this market and is not knowledgeable of the market intricacies associated with organic juice.
	Same.
***	The physical characteristics of conventional and organic oranges are identical except for some of the inputs and handling practices used to grow conventional vs. organic oranges. The end use is also similar in that the customer drinks orange juice.
***	The physical characteristics of conventional and organic oranges are identical except for some of the inputs used to grow conventional vs. organic oranges. The end use is also similar in that the customer drinks orange juice.
***	We don't import organic FCOJM. All our products using orange juice consist of nonorganic FCOJM.
***	We have no experience in the market, and realistically it is such a small percentage of demand that we have had very little to no exposure.
Interchangeability	
***	FCOJM - \$***/MT duty not paid, 65 Brix. Required capital < \$***/box of capacity NFC - \$***/MT duty not paid, 12 Brix. Capital to install capacity just to store/handle/ship/store the necessary plant/trucks/vessels/terminal/trucks from Brazil to USA is roughly \$*** box of capacity. Required capital investment to develop a capability to store/handle/sell this product after extraction step per the market requirements is about \$***/lb solid.
***	Interchangeable except for organic certification.
***	Not interchangeable. *** never purchases non-organic FCOJM. I do not follow market trends for conventional FCOJM to set prices. I am not aware of any organic producer selling any organic OJ (NFC or FC) on the non organic market.
***	Organic could be used in nonorganic juice but nonorganic cannot be used in organic.
***	The products are segregated and run separately. It is a completely different blend of OJ.
***	The two products are not interchangeable unless the conventional oranges have gone through the three-year conversion process to organic. But organic oranges may be sold as conventional at any point. So organic juice may be imported and sold as conventional juice.

***	The two products are not interchangeable unless the conventional oranges have gone through the three-year conversion process to organic. But organic oranges may be sold as conventional at any point. So organic juice may be imported and sold as conventional juice.
***	The stringent retail labeling and product characteristics of organic FCOJM preclude interchangeability with non-organic product. *** generally does not sell organic and conventional juice to the same customers. Organic juice would never be sold as conventional because it is too expensive to produce.
***	We have no experience in the market, and realistically it is such a small percentage of demand that we have had very little to no exposure.
***	We don't import organic FCOJM. All our products using orange juice consist of nonorganic FCOJM.
Manufacturing processes	
***	Certain inputs are interchangeable between conventional and organic.
***	Certain inputs are interchangeable between conventional and organic, for example the use of copper sulfate as a fungicide. Generally, the source of Nitrogen fertilizer is much different in organic production, and cannot be from a synthetic, inorganic source such as is used in conventional citrus production. Also, organic production uses little if any herbicide. However, the actual packing and processing portions of the manufacture are similar enough that they occur in the same packinghouses and processing plants; only the use of approved chemicals of organic use is different.
***	Comparable. Organic processing requires Certified Organic (NOP compliant) processing which includes product segregation in manufacturing, documented use of organically certified processing and sanitation materials and procedures. Florida has at least one producer that is exclusively organic.
***	FCOJM - \$***/MT duty not paid, 65 Brix. Required capital < \$***/box of capacity NFC - \$***/MT duty not paid, 12 Brix. Capital to install capacity just to store/handle/ship/store the necessary plant/trucks/vessels/terminal/trucks from Brazil to USA is roughly \$*** box of capacity. Required capital investment to develop a capability to store/handle/sell this product after extraction step per the market requirements is about \$***/lb solid.
***	No difference other than CPI before production of organic can occur.
***	Organic FCOJM differs from non-organic product in that it has been produced and handled only by an operation or operations certified by a certifying agent duly accredited under the USDA National Organic Program regulations. These operations include different growing processes for organic and non-organic fruit, as well as specific methods by which they are handled and processed separately.
***	Same except organic is grown organically.
***	We don't import organic FCOJM. All our products using orange juice consist of nonorganic FCOJM.
***	We have no experience in the market, and realistically it is such a small percentage of demand that we have had very little to no exposure.
***	We are organic certified. We run production separately for organic.
Channels of distribution	
***	FCOJM - \$***/MT duty not paid, 65 Brix. Required capital < \$***/box of capacity NFC - \$***/MT duty not paid, 12 Brix. Capital to install capacity just to store/handle/ship/store the necessary plant/trucks/vessels/terminal/trucks from Brazil to USA is roughly \$*** box of capacity. Required capital investment to develop a capability to store/handle/sell this product after extraction step per the market requirements is about \$***/lb solid.
***	Organic FCOJM is typically disseminated through unique distribution channels (primarily specialty producers and specialty stores). Organic FCOJM is sold only to bottlers.
***	Organic distribution is focused on a natural channel of distribution (i.e., ***). There are distributors that exclusively or heavily focus on organic orange juice (vs. non-organic). Organic NFC or SSE retail is generally distributed by organic dairy companies. ***FCOJR is sold in many of the same chains, as *** non organic product via separate distribution. There is some distribution in traditional supermarkets. Often, organic orange products are placed in separate "organic" sections. Most orange juice to retail stores (vs. foodservice).

***	NFCOJ and FCOJR in comparison: NFCOJ and other SSE retail carton orange juice distribute orange juice via dairy distribution and other refrigerated channels. *** organic FCOJR is distributed via other frozen products. NFCOJ and FCOJR tend to be managed as separate categories by different buyers in the retail channel.
***	Same.
***	Sold in retail - organic potential customers much much less than conventional juice.
***	The organic OJ is in drums vs tankers for FCOJ and NFCOJ. Blend is on demand of product vs. stock items.
***	The channels of distribution are very similar. There are a few methods of distribution that are not available to conventional but they are small in volume.
***	The channels of distribution are very similar. There are a few methods of distribution that are not available to conventional but they are small in volume.
***	We don't import organic FCOJM. All our products using orange juice consist of nonorganic FCOJM.
***	We have no experience in the market, and realistically it is such a small percentage of demand that we have had very little to no exposure.
Customer and producer perception	
***	As this is a separate item it is a niche market, therefore, is a higher price to run.
***	Customers feel organic is the healthier product. Producers expect higher margins on sales.
***	FCOJM - \$***/MT duty not paid, 65 Brix. Required capital < \$***/box of capacity NFC - \$***/MT duty not paid, 12 Brix. Capital to install capacity just to store/handle/ship/store the necessary plant/trucks/vessels/terminal/trucks from Brazil to USA is roughly \$*** box of capacity. Required capital investment to develop a capability to store/handle/sell this product after extraction step per the market requirements is about \$***/lb solid.
***	I do not track conventional FCOJ prices as significant factor in the price of organic FCOJ. The markets for organic and non-organic are not linked. Organic NFCOJ and Organic FCOJM carry a significant premium over non-organic NFCOJ or non-organic FCOJM.
***	Oranges that are grown without pesticides inhibitor. Has distinction of healthier and all-natural.
***	Organic orange juice is labeled and marketed in a manner befitting its perception as a unique "all-natural" health-food product; producers and consumers perceive it to be unique from non-organic orange juice. Organic juice producers have a different cost structure that is more labor intensive than that of conventional producers.
***	Organic perceived by customer to be more healthy - not necessarily higher quality.
***	Organic 25-50 percent more than conventional NFCOJ.
***	Organic is more expensive.
***	Organic juice typically trades in a niche market at a price that is much higher than the price of non-organic orange juice. From January of 2003 through September 2005, our average sales price (to U.S. customers) for organic FCOJM was roughly 60 to 70 cents/ps higher than the comparable average price for non-organic FCOJM. The price of organic juice is not influenced by the conventional juice futures market or pricing in the conventional juice market.
***	Organic orange juice is perceived to have better flavor than non-organic orange juice. Producers recognize that organic product requires higher costs and they expect a price premium. In particular, the cost of organic oranges carries a significant premium over non-organic oranges.
Price	
***	Some customers make a clear distinction between organic and conventional juice for perceived health reasons, but most consumers really do not understand the differences between the two types of production. The organic industry seeks to promote juices from organically grown fruit as a healthier alternative to conventionally grown fruit.

***	There is a price differential between organic and conventional which varies based on the usual factors of supply and demand. The price for organic can be skewed if juice produced for organic purposes is sold as conventional, and vice versa. The total demand for organic oranges is very small compared to conventional orange demand, so a sudden increase in the supply of organic oranges could disrupt price differentials that exist today.
***	There is a price differential between organic and conventional which varies based on the usual factors of supply and demand. The price for organic can be skewed if juice produced for organic purposes is sold as conventional. The price for organic juice has been suppressed in recent years by low futures market prices for FCOJM and the purchase of an organic producer by one bulk customer of conventional juice who has been treating organic juice as more of a commodity, similar to bulk conventional juice.
***	We have no experience in the market, and realistically it is such a small percentage of demand that we have had very little to no exposure.
***	We don't import organic FCOJM. All our products using orange juice consist of nonorganic FCOJM.
Source: Compiled from responses to Commission questionnaires.	

APPENDIX E

**ALLEGED EFFECTS OF SUBJECT IMPORTS ON U.S. PRODUCERS'
EXISTING DEVELOPMENT AND PRODUCTION EFFORTS,
GROWTH, INVESTMENT, AND ABILITY TO RAISE CAPITAL**

Responses of U.S. extractor/processors to the following questions:

1. Since January 1, 2002, has your firm experienced any actual negative effects on its return on investment or its growth, investment, ability to raise capital, existing development and production efforts (including efforts to develop a derivative or more advanced version of the product), or the scale of capital investments as a result of imports of certain orange juice from Brazil?

Responses of the extractor/processors are:

A. Duda	***
Cargill	***
Citrosuco NA	***
Citrus World	***
Cutrale USA	***
Holly Hill	***
Louis Dreyfus	***
Peace River	***
Southern Gardens	***

2. Does your firm anticipate any negative impact of imports of certain orange juice from Brazil?

Responses of the extractor/processors are:

A. Duda	***
Cargill	***
Citrosuco NA	***
Citrus World	***
Cutrale USA	***
Holly Hill	***
Louis Dreyfus	***
Peace River	***
Southern Gardens	***

