

August 30, 2004

MEMORANDUM TO: James J. Jochum
Assistant Secretary, Import Administration

FROM: Ronald K. Lorentzen
Acting Director, Office of Policy

SUBJECT: Issues and Decision Memorandum for the Expedited Sunset Review of the
Antidumping Duty Order on Frozen Concentrated Orange Juice from
Brazil; Final Results

Summary

We have analyzed the substantive responses of the interested parties in the second sunset review of the antidumping duty order covering frozen concentrated orange juice (“FCOJ”) from Brazil. We recommend that you approve the positions we have developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this sunset review for which we received a substantive response:

1. Likelihood of continuation or recurrence of dumping
 - A. Weighted-average dumping margin
 - B. Volume of imports
2. Magnitude of the margin likely to prevail
 - Margins from investigation

History of the Order

On March 17, 1987, the Department of Commerce (“Department”) published its final affirmative determination of sales at less than fair value (“LTFV”) in the *Federal Register* with respect to imports of FCOJ from Brazil. *See FCOJ from Brazil; Final Determination of Sales at Less Than Fair Value*, 52 FR 8324 (March 17, 1987). On May 5, 1987, the Department published in the *Federal Register* an antidumping duty order on FCOJ from Brazil. *See Antidumping Duty Order; FCOJ from Brazil*, 52 FR 16426 (May 5, 1987). Since the issuance of the antidumping

order, the Department has conducted several administrative reviews with respect to imports of FCOJ from Brazil.¹

The Department initiated the first sunset review of FCOJ on December 2, 1998, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). *See Initiation of Five-Year Review*, 63 FR 66527 (December 2, 1998). As a result of that review, the Department found that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. *See Final Results of Expedited Sunset Review: FCOJ from Brazil*, 64 FR 16901 (April 7, 1999). In that determination, the Department also reported to the International Trade Commission (“ITC”) as the likely dumping margin for all Brazilian manufacturers or exporters covered by the order a rate of 1.96 percent. On August 5, 1999, the Department published the notice of continuation of the antidumping order. *See Continuation of Antidumping Order: FCOJ from Brazil*, 64 FR 42660 (August 5, 1999). This review covers imports from all manufacturers and exporters of FCOJ from Brazil, other than imports produced by Sucocitrico Cutrale, S.A., which was excluded from the order (52 FR 16426, May 5, 1987), as well as Cargill Citrus Ltda, Citrosuco Paulista S.A., Coopercitrus Industrial Frutesp S.A., and Montectirus Trading S.A., for which the order was revoked (56 FR 52510, October 21, 1991) and Frutropic, for which the order was also revoked (59 FR 53137, October 21, 1994).

Background:

On April 1, 2004, the Department published the notice of initiation of the second sunset review of the antidumping duty order on FCOJ from Brazil pursuant to section 751(c) of the Act.² The Department received the Notice of Intent to Participate from the domestic interested parties Florida Citrus Mutual; Citrus Belle; Citrus World, Inc.; Peace River Citrus Products, Inc.; and Southern Gardens Citrus Processors Corporation (collectively “the domestic interested parties”) within the deadline specified in section 351.218(d)(1)(i) of the Department’s Regulations (“Sunset Regulations”).

¹*See FCOJ from Brazil; Final Results of Antidumping Duty Administrative Review*, 55 FR 26721 (June 29, 1990); *FCOJ from Brazil; Final Results and Termination in Part of Antidumping Duty Administrative Review*, 55 FR 47502 (November 14, 1990); *FCOJ; Final Results and Termination in Part of Antidumping Duty Administrative Review; Revocation in Part of the Antidumping Duty Order*, 56 FR 52510 (October 21, 1991); *FCOJ from Brazil; Final Results and Termination in Part of Antidumping Duty Administrative Review*, 57 FR 12910 (April 14, 1992); *FCOJ; Final Results of Antidumping Duty Administrative Review and Revocation of Order in Part*, 59 FR 53137 (October 21, 1994); *Notice of Final Results of Antidumping Duty Administrative Review: FCOJ from Brazil*, 62 FR 5798 (February 7, 1997); *FCOJ from Brazil; Final Results of Antidumping Duty Administrative Review*, 62 FR 29328 (May 30, 1997); *FCOJ from Brazil; Final Results of Antidumping Duty Administrative Review*, 63 FR 26145 (May 12, 1998); *FCOJ from Brazil; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 64 FR 43650 (August 11, 1999); *FCOJ from Brazil; Final Results of Antidumping Duty Administrative Review*, 65 FR 60406 (October 11, 2000); *FCOJ from Brazil; Amended Final Results of Antidumping Duty Administrative Review*, 65 FR 66691 (November 7, 2000); *FCOJ from Brazil; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 66 FR 51008 (October 5, 2001); *FCOJ from Brazil; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 40913 (June 14, 2002).

² *Initiation of Five-Year (Sunset) Review*, 69 FR 17129 (April 1, 2004).

The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as domestic manufacturers of FCOJ. We received complete substantive responses only from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). The Department received a waiver of participation from Citrovita Agro Industrial, Ltda., a respondent interested party, and received no other response from the respondent interested parties. *See* Response of Citrovita Agro Industrial, Ltda., “FCOJ from Brazil Sunset Review: Clarification” (May 10, 2004). As a result, pursuant to section 751(c)(5)(A) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of this order.

Discussion of the Issues:

In accordance with section 751(c)(1) of the Act, the Department conducted this sunset review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making these determinations, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent review and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Below we address the comments of the interested parties.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

The domestic interested parties believe that revocation of this antidumping duty order would likely lead to a continuation or recurrence of dumping by the Brazilian producers of the subject merchandise due to continued dumping. *See* Substantive Response of the Domestic Interested Parties (“Domestic Response”) (March 31, 2004) at 9. The domestic interested parties contend that agricultural products, such as oranges, require additional analysis because of their perishable nature and production cycles, such that the fluctuations in import volumes should have lesser probative value. *Id.* at 7. The domestic interested parties urge the Department to analyze whether the antidumping order has imposed a price discipline to protect against sales at less than normal value, regardless of the volume of imports. *Id.* Quoting from industry sources and the Department’s statistics, the domestic interested parties contend that the Brazilian FOB cost of FCOJ imports processed from crop year 2002/03 oranges can be conservatively estimated at \$0.64 per pound solid, whereas the trade-weighted average customs unit value of bulk FCOJ from Brazil was only \$0.61 per pound solid during March 2003 to February 2004. *Id.* at 8. The domestic interested parties thus contend that the Brazilian industry sold FCOJ at prices below the cost of production during March 2003 to February 2004. *Id.* The domestic interested parties argue that the order acts as a restraint against unfair pricing; and that consequently, Brazilian producers would likely sell at dumped prices were the order to be revoked. *Id.*

Citrovita Agro Industrial, Ltda. explained that it has not been able to export FCOJ to the United States because of the antidumping order. *See* Response of Citrovita Agro Industrial, Ltda., “FCOJ from Brazil Sunset Review: Clarification” (May 10, 2004).

Department's Position

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (“URAA”), specifically the Statement of Administrative Action (“SAA”), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H. Rep. No. 103-826, pt. 1 (1994) (“House Report”), and the Senate Report, S. Rep. No. 103-412 (1994) (“Senate Report”), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis. *See Sunset Policy Bulletin at section II.A.2.* In addition, the Department indicated that normally it will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly. *See Sunset Policy Bulletin at section II.A.3.*

Consistent with the *Sunset Policy Bulletin*, the Department normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where, *inter alia*, dumping continued at any level above *de minimis* after the issuance of the order. The Department has conducted a number of reviews since issuance of the order in which it found that dumping continued at levels above *de minimis*. *See* Footnote 1 of this Memorandum.

The Department has also considered the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping order. *See Sunset Policy Bulletin at section II.A.1.* Using statistics provided by the ITC Dataweb (see attached), the Department finds that imports have fluctuated since 1999, the completion of our first sunset review. Although the import statistics show initially a decrease in imports of the subject merchandise, the imports of subject merchandise have not consistently decreased. In fact, the statistics also disclose a dramatic increase in imports in 2003. In sum, the fact that (i) dumping at above *de minimis* levels has continued since the imposition of the order, including findings of dumping at above *de minimis* levels since the Department’s completion of its first sunset review of the order, and the fact that (ii) import volumes have at times increased after issuance of the order, are both highly probative of the likelihood of continuation of dumping. Therefore, the Department determines that dumping would likely continue or recur if the order were revoked.

The Department has not completed the additional analysis requested by the domestic interested parties on the basis of the fact that FCOJ is a commodity product. The domestic interested parties did

not substantiate how or why a commodity product should be treated differently than any other industrial product that the Department reviews in the context of a sunset review. Because the Department has found dumping occurred over the life of the order, the Department finds no reason to consider the domestic interested parties' argument that additional analysis is required for antidumping orders on agricultural products.

2. Magnitude of the Margin Likely to Prevail:

Interested Party Comments

In its substantive response, the domestic interested parties argue that current margins are the margins that will likely prevail if the order were revoked because current market conditions dictate the level of dumping. *See* Domestic Response at 11. They further argue that the Brazilian producers will likely sell their season's output at prices "which reflect the lowest common denominator." *Id.* Accordingly, they contend that the Department should inform the ITC that the most recent margin of 15.98 percent for Citrovita Agro Industrial Ltda (found in the final results of the most recent administrative review, 67 FR 40913, June 14, 2002) and the 1.96 percent margin for all other Brazilian companies covered by the order will likely prevail if revocation occurs. *Id.*

Department's Position

In the *Sunset Policy Bulletin*, the Department stated that it normally will provide to the ITC the company-specific margin from the investigation for each company. For companies not investigated specifically or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "All Others" rate from the investigation. Exceptions to this policy include the use of a more recently calculated margin, where appropriate. *See Sunset Policy Bulletin* Sections II.B.2 and 3. Further, in section II.B.1. of the *Sunset Policy Bulletin*, the Department discussed the legislative history related to the selection of the magnitude of the margin likely to prevail and clarified the preference for selecting a margin "from the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place."

In this review, the domestic interested parties request that the Department determine that the current dumping margins (Citrovita at 15.98 percent and all other Brazilian manufacturers at 1.96 percent) are the margins that are likely to prevail if this order were revoked. *See Final Results of the Administrative Antidumping Review; FCOJ from Brazil*, 66 FR 51008 (October 5, 2001). The Department may, in response to an argument from an interested party, provide to the ITC a more recently calculated margin for a particular company where, for that company, dumping margins increased, even if the increase was a result of the application of best information or facts available. *See Sunset Policy Bulletin* II.B.2. In this instance, Citrovita did not begin shipping until after the order was issued. Further, several companies that received individual margins in the investigation have since been

excluded from the order.³ In addition, imports from 1999-2003 indicate a decline in import volumes of FCOJ to the United States until 2003 when imports almost doubled to over 800 million liters compared to 2002 import volumes. See attached import statistics.

The Department has determined, based on the facts of this case, to report the most recent margin for Citrovita to the ITC. Since the continuation of the order, the Department completed five administrative reviews. See Footnote 1 of this Memorandum. In two of these administrative reviews, the Department calculated increasing dumping margins for Citrovita.⁴ The Department determines that it is appropriate to report to the ITC the rate from the most recently completed review because Citrovita has continued to dump, at increasing rates, despite the discipline of the order. For all other Brazilian exporters/producers of the subject merchandise, the Department will report to the ITC the all others rate of 1.96 percent from the original investigation as contained in the *Final Results of Review* section of this notice. The Department views the all others rate as probative of the behavior of Brazilian producers/exporters if the order were revoked as they are the only margins which reflect their actions absent the discipline of the order.

The Department notes that Sucocitrico Cutrale, S.A. was excluded from the order during the investigation. The Department also notes that the order has been revoked with respect to the following companies: Citrosuco Paulista, S.A., Cargill Citrus Ltda., Coopercitrus Industrial Frutesp S.A., Montectirus Trading S.A., and Frutropic.

Final Results of Review

We determine that revocation of the antidumping duty order on FCOJ from Brazil would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted-Average Margin (percent)
Citrovita	15.98

³ As we stated above, this sunset review covers imports of FCOJ from Brazil, other than those imports produced by Cargill Citrus Ltda, Citrosuco Paulista S.A., Coopercitrus Industrial Frutesp S.A., and Montectirus Trading S.A., for which the order was revoked (56 FR 52510, October 21, 1991) and Frutropic, for which the order was also revoked (59 FR 53137, October 21, 1994).

⁴ See *FCOJ from Brazil; Amended Final Results of Antidumping Duty Administrative Review*, 65 FR 66691 (November 7, 2000) (Department reported a revised dumping margin of 14.77 percent for Citrovita); and *FCOJ from Brazil; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 66 FR 51008, 51009 (October 5, 2001) (Department calculated dumping margin of 15.98 percent for Citrovita).

All Others

1.96

Recommendation

Based on our analysis of the substantive response received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review in the *Federal Register*.

AGREE X

DISAGREE _____

ORIGINAL SIGNED

James J. Jochum
Assistant Secretary
for Import Administration

8/31/04

(Date)