

MEMORANDUM TO: Ronald K. Lorentzen  
Acting Assistant Secretary  
for Import Administration

FROM: Stephen J. Claeys  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of  
Antidumping Duty Changed Circumstances Review on Certain  
Orange Juice from Brazil

### Summary

We have analyzed the comments of the interested parties in the changed circumstances review of the antidumping duty order on certain orange juice (OJ) from Brazil. As a result of our analysis of those comments, as in the preliminary results, we find that there is sufficient interest on the part of the domestic industry to warrant the continued inclusion of ultra low pulp orange juice (ULPOJ) in the antidumping duty order on OJ from Brazil. Accordingly, we determine that changed circumstances warranting revocation in part of the antidumping duty order on OJ from Brazil do not exist. Below is a discussion of the sole issue in this changed circumstances review on which we received comments from parties (i.e., whether the Department should include growers in its industry support determination).

### Background

On March 9, 2006, the Department of Commerce (the Department) published in the Federal Register an antidumping duty order on OJ from Brazil. See Antidumping Duty Order: Certain Orange Juice from Brazil, 72 FR 12183 (Mar. 9, 2006). On April 29, 2008, at the request of Tropicana Products, Inc. (Tropicana), a domestic producer of OJ, the Department initiated a changed circumstances review of the order to consider partially revoking the order with respect to ULPOJ, pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216(b) and 351.222(g)(1)(i). See Certain Orange Juice from Brazil: Initiation of Antidumping Duty Changed Circumstances Review, 73 FR 23182 (Apr. 29, 2008) (Initiation Notice).

On October 10, 2008, the Department published the preliminary results of this changed circumstances review. See Certain Orange Juice from Brazil: Preliminary Results of

Antidumping Duty Changed Circumstances Review and Intent Not to Revoke, In Part, 73 FR 60241 (Oct. 10, 2008) (Preliminary Results). In the Preliminary Results, we treated both the growers and processors of oranges into juice as domestic producers of OJ, consistent with our definition of the domestic industry during the less-than-fair-value (LTFV) investigation. After considering all comments received from interested parties regarding Tropicana's revocation request, we found that there was insufficient support by the producers of the domestic like product for the partial revocation with respect to ULPOJ.

We invited parties to comment on our preliminary results of review. In November 2008, we received case and rebuttal briefs from Tropicana and the petitioners (*i.e.*, Florida Citrus Mutual, A. Duda & Sons, Inc. (doing business as Citrus Belle), and Citrus World, Inc.).<sup>1</sup> Based on our analysis of the comments received, we recommend not changing the results from those presented in the Preliminary Results.

Comment: Whether the Department Should Include Growers in its Industry Support Determination

Pursuant to section 751(d) of the Act, the Department may revoke an antidumping duty order based on a review under section 751(b) of the Act. Further, section 782(h)(2) allows for revocation of an order for lack of interest if “producers accounting for substantially all of the production of that domestic like product {to which the order pertains}, have expressed a lack of interest in the order ....” The Department’s regulations at section 351.222(g)(1)(i) provide that the Department may revoke an order, in whole or in part, based on changed circumstances if “{p}roducers accounting for substantially all of the production of the domestic like product to which the order (or part of the order to be revoked)...pertains have expressed a lack of interest in the order, in whole or in part.” In this context, the Department has interpreted “substantially all” production normally to mean at least 85 percent of domestic production of the like product. See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Preliminary Results of Antidumping Duty Changed Circumstances Review and Intent Not to Revoke, In Part, 70 FR 35618, 35624 (June 21, 2005), unchanged in Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Final Results of Antidumping Duty Changed Circumstances Review and Determination Not to Revoke, In Part, 70 FR 47787 (Aug. 15, 2005). In the context of this changed circumstances review, if the Department considers the position of the domestic producers consisting of both growers and processors, and not just processors, for purposes of this 85 percent calculation, then there is insufficient industry support to justify the partial revocation requested by Tropicana.

Tropicana argues that, although the Department permissibly included the growers in its industry support determination for purposes of initiating the underlying LTFV investigation under section 771(4)(E) of the Act (*i.e.*, the “agricultural provision”), growers should not be included in changed circumstances reviews under section 751(b) of the Act or 19 CFR 351.222(g)(1)(i). Tropicana contends that under the 19 CFR 351.222(g)(1)(i), only “producers” should be included

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<sup>1</sup> These entities are opposing this changed circumstances review; however, another petitioner, Southern Gardens Citrus Processing Corporation, has not joined these entities in opposing Tropicana's request.

in the Department's determination of the level of domestic industry support, and it argues that the growers do not meet the definition of "producer" set forth in the statute.

Specifically, Tropicana argues that the industry support determination for purposes of initiating an LTFV investigation under section 732(c) of the Act is distinct from the determination the Department must perform under 19 CFR 351.222(g)(1)(i) to determine industry interest for a partial revocation. Tropicana points to section 732(c)(5) of the Act, noting that the definition of "domestic producers or workers" related to the initiation of an LTFV investigation is a limited definition for "purposes of this subsection." Similarly, Tropicana argues that the agricultural provision applies only in investigations, and only to grant growers status limited to standing to file a petition. Tropicana contends that this limited status does not define the growers as "producers," nor does it extend to industry interest evaluations made under 19 CFR 351.222(g)(1)(i).

The petitioners argue that the Department correctly included the orange growers as part of the producers under 19 CFR 351.222(g)(1)(i). The petitioners contend that in the LTFV investigation, and any time the agricultural provision is invoked, "the producers or growers of the raw agricultural product may be considered part of the industry producing the processed product." The petitioners further argue that there is no distinction between being "part of the industry producing the processed product" under the agricultural provision and being a "producer of the domestic like product," as required under 19 CFR 351.222(g)(1)(i). Thus, the petitioners contend that growers are "producers" by virtue of being included under the agricultural provision in the LTFV investigation.

The petitioners note that the term "producer" is not defined anywhere in the Act or the Department's regulations. According to the petitioners, there is no difference between "producers of the domestic like product" and "industry" under the Act, as evidenced by the language in section 771(4)(A) of the Act, which defines "industry" as the "producers as a whole of a domestic like product...." Therefore, the petitioners contend that, in referring to "producers," 19 CFR 351.222(g)(1)(i) directs the Department to look to the positions of the different members of the "industry," and in this case, the orange juice industry includes the orange growers. The petitioners further argue that it would be illogical for the Department to consider the position of one consolidated group for industry support for purposes of the initiation of the LTFV investigation, but then consider the position of only a subset of that group for purposes of revoking an order. The petitioners contend such an interpretation would impermissibly allow for revocation without the consent of the entire domestic industry that filed the petition.

The petitioners contend that the above interpretation of the Act is also consistent with the intent of Congress when enacting the industry support provision. Specifically, the petitioners assert that the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act at 194 indicates that in reference to section 782(h) of the Act (*i.e.*, the section relating to no-interest revocations) Congress intended antidumping duty orders to provide relief to the affected "industry." Further, the petitioners point to the SAA at 187 arguing that the SAA specifically expresses the Congressional motive for granting status to growers of an agricultural provision where their interests may not be the same as those of the "processors." Thus, the

petitioners argue it would frustrate Congressional intent in establishing the agricultural provision were the Department to be able to revoke an order, in whole or in part, by only taking into consideration the position of the processors.

Department's Position:

We continue to find that it is appropriate to include the growers in our determination of industry support for purposes of this changed circumstances review. As we stated in the Preliminary Results:

Under section 732(b)(1) of the Act, the Department must determine whether the petition is filed on behalf of the domestic industry at the time that it initiates an investigation. In order to determine whether the petition has been filed on behalf of the domestic industry, section 732(c)(4)(A) of the Act requires the Department to determine the proportion of the industry, in terms of production of the domestic like product, supporting the petition. Section 771(4)(A) of the Act defines the term "industry" as "the producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product." Moreover, section 771(4)(E)(i) of the Act states "in an investigation involving a processed agricultural product produced from any raw agricultural product, the producers or growers of the raw agricultural product may be considered part of the industry producing the processed product."

We find that the definition of the domestic industry from the LTFV investigation applies in subsequent segments of the proceeding.<sup>2</sup> In the LTFV investigation, the Department "included growers of round oranges for processing as part of the industry producing the processed agricultural product." See the October 6, 2008, memorandum to the file from Henry Almond, analyst, entitled, "Placing Information Regarding the LTFV Industry Support Calculation on the Record of the ULPOJ Changed Circumstances Review," at page 10 (emphasis added) (LTFV Industry Support Memo). Similar to the determination required by section 732(c)(4)(A) of the Act, the Department's regulations require the Department to determine what proportion of the "production of the domestic like product" those producers expressing a lack of interest in the order, in whole or in part, represent. Thus, because growers of the oranges that are ultimately processed into juice are part of the industry producing the domestic like product, we find that they are "producers" for purposes of 19 CFR 351.222(g)(1)(i) and must be included in the Department's industry support calculation. Moreover, including these companies for industry support purposes when determining whether to initiate the LTFV investigation, but excluding them for purposes of a partial revocation, would create two mutually inconsistent definitions of the industry producing the

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<sup>2</sup> We note that pursuant to section 732(c)(4)(E) of the Act, "{a}fter the administering authority makes a determination with respect to initiating an investigation, the determination regarding industry support shall not be reconsidered."

domestic like product and would deny those petitioners the ability to maintain the order, in whole or in part. See Preliminary Results, 73 FR at 60243.

In its case brief, Tropicana presented no new arguments which would cause us to reconsider this position. As a threshold matter, we disagree with Tropicana that the agricultural provision is limited to the determination of standing in the LTFV segment of a proceeding and that it does not apply to subsequent segments. As outlined above, section 771(4)(A) of the Act defines the term “industry” as “the producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.” In the LTFV investigation, under section 771(4)(E)(i) of the Act,<sup>3</sup> we found the growers to be “part of the industry producing the processed product.” In this case, the processed product is orange juice, *i.e.*, the domestic like product. By virtue of being included in the LTFV investigation as part of the domestic industry (*i.e.*, as part of the “producers as a whole” and as part of the “industry producing the processed product”), the position of the growers continues to be relevant to the question of whether the order on OJ should be maintained, in whole or in part.

In the context of the LTFV investigation initiation, we conducted a substantial factual analysis of the U.S. orange juice industry and found that orange juice is produced through a single continuous line of production from growers through the processors, and that the growers and processors had substantial coincidence of economic interests, as required under sections 771(4)(E)(i)(I) and (II). See the LTFV Industry Support Memo at 9-12. Thus, based on the nature of the U.S. orange juice industry, where the growers supply the sole ingredient (oranges) and the processors process the oranges into juice, the Department found the growers to be sufficiently integrated in the production of orange juice to justify their inclusion in the Department’s definition of the domestic industry.<sup>4</sup> This substantial role the orange growers play in the production of orange juice has not changed since the LTFV investigation, and we find it

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<sup>3</sup> Section 771(E)(i) provides:

- (E) Industry producing processed agricultural products
  - (i) In general Subject to clause (v), in an investigation involving a processed agricultural product produced from any raw agricultural product, the producers or growers of the raw agricultural product may be considered part of the industry producing the processed product if—
    - (I) the processed agricultural product is produced from the raw agricultural product through a single continuous line of production; and
    - (II) there is a substantial coincidence of economic interest between the producers or growers of the raw agricultural product and the processors of the processed agricultural product based upon relevant economic factors, which may, in the discretion of the Commission, include price, added market value, or other economic interrelationships (regardless of whether such coincidence of economic interest is based upon any legal relationship).

<sup>4</sup> We note that the essential role growers play in producing the final product is reflected in Tropicana’s own calculation of the level of industry support as Tropicana’s measure of industry support is based upon the oranges processed, and not on a calculation of the juice produced by the processors. See the May 27, 2008, Letter from Tropicana to Secretary of Commerce, at page 7 and Exhibit 1.

necessary to include their role in the production of orange juice if we are to account for “substantially all” of the production of the domestic like product.

In regards to no-interest revocations under section 782(h) of the Act, the SAA at 194 echoes Congress’ intent that antidumping duty orders provide relief to a domestic industry as a whole – rather than to individual companies – and such orders should only be maintained so long as they continue to benefit that industry. Thus, this provision permits the Department to revoke an order in part where a domestic industry, as a whole, expresses a lack of interest in the continuation of the order. Contrary to Tropicana’s argument, by enacting this provision Congress did not intend to redefine the domestic industry (or to eliminate certain elements of it); rather it acted to ensure that the interests of the producing industry as a whole were considered when determining whether there was a lack of interest in maintaining a particular order.<sup>5</sup>

Thus, Congress envisioned situations such as the one here where the interests of the processors and the growers might be at odds with one another, and specifically afforded protection to the broader producing industry.<sup>6</sup> To allow for the inclusion of the growers at the LTFV investigation stage, but to refuse protection to the same growers in a later segment of a proceeding, would frustrate Congress’ stated concern for affording protection to growers as members of the domestic industry.

Tropicana seeks to draw the barest of distinctions between the term “producers” – a term that is not defined in either the Act or the Department’s regulations – and the definition of domestic industry in section 771(4)(E) of the Act, that is defined as “the producers as a whole of a domestic like product.” As outlined above, we continue to find that such an approach is not supported by the Act, as the constitution of the domestic industry is determined in the LTFV investigation, and that determination applies in subsequent segments of the proceeding. Further, interpreting the term “producers” in the context of this proceeding to exclude the growers would illogically create two inconsistent definitions of the domestic industry and would frustrate Congress’ stated intent in providing relief to growers in cases involving agricultural products. Thus, we have continued to consider the position of the orange growers, as well as processors, in our determination of industry support for this changed circumstances review. Consequently, we

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<sup>5</sup> Specifically, the SAA indicates that section 782(h) of the Act was put in place to prevent an individual petitioner from preventing the revocation of an order, despite the fact that the domestic industry as a whole may be in favor of revocation. We find no indication in the language of the antidumping statute, the legislative history, or the SAA that this provision was intended to deny a petitioning firm relief to which it is entitled under U.S. antidumping law merely because the investigation stage of the proceeding had passed and a dumping order was in place.

<sup>6</sup> This concern for providing relief to the broader industry inclusive of the growers of the raw agricultural product, and not only the processors of the final product, is reflected in the SAA, which provides that:

With respect to imports of dumped or subsidized processed agricultural products, domestic growers and interim processors of agricultural commodities might be damaged by imports of the processed products, even though the domestic processors themselves may not be adversely affected.

See the SAA at 187.

find that Tropicana has not demonstrated that substantially all (i.e., at least 85 percent) of the domestic industry has no interest in maintaining the order with respect to ULPOJ, and thus we find that revocation of the order with respect to this product is not warranted.

Recommendation

Based on the analysis outlined above, we recommend finding that producers accounting for substantially all of the production of the domestic like product have not expressed a lack of interest in maintaining the order with respect to ULPOJ. Thus, we recommend finding that changed circumstances sufficient to warrant revocation, in part, of the antidumping duty order on certain orange juice from Brazil do not exist. Accordingly, we recommend maintaining the antidumping duty order on certain orange juice from Brazil with respect to ULPOJ.

Agree\_\_\_\_\_ Disagree\_\_\_\_\_

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Ronald K. Lorentzen  
Acting Assistant Secretary  
for Import Administration

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(Date)