Florida Journal of International Law

Volume 3 | Issue 3 Article 5

June 1988

The Impact of Foreign Imports on the Florida Citrus Industry

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THE IMPACT OF FOREIGN IMPORTS ON THE FLORIDA CITRUS INDUSTRY

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I. INTRODUCTION

Since the introduction of citrus fruits[1] into Florida sometime before 1579,[2] citrus production has become a key Florida industry, vital to the state's economic well-being.[3] In a recent news release, the Florida

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1. The Florida Citrus Code of 1949 defines citrus fruits to mean "all varieties and regulated hybrids of citrus fruit and . . . processed citrus products containing 20% or more citrus fruit or citrus fruit juice [excluding] limes, lemons, marmalade, jellies, preserves, candies, or citrus hybrids for which no specific standards have been established by the Department of Citrus." FLA. STAT. § 601.03(7) (1987). Citrus fruits include "grapefruit, oranges, tangerines, Temples, tangelos, and murcott honey oranges grown in Florida." *Id.* § 600.041(3).

2. The actual date is unknown. Columbus brought citrus seeds to the Americas in the 15th century, seeds that were planted throughout the Antilles. J. MCPHEE, ORANGES 89 (1966). In 1518, when Spanish explorer Juan de Grijalva landed in Central America, the first citrus was planted on the mainland of the Americas. By 1579, Pedro Menendez Marquez reported that citrus was thriving in the St. Augustine area. THE FLORIDA ALMANAC: 1986-1987 333 (9th ed. 1986-87) [hereinafter cited as ALMANAC]. The first commercial groves were planted along the east and west coasts of Florida. The Count Odet Phillipe grove planted in Pinellas County in the early 19th century is considered to be one of the oldest Florida groves. FLORIDA HANDBOOK: 1987-88 484 (21st ed. 1986-87).

3. *See* Sligh v. Kirkwood, 237 U.S. 52, 61 (1915) ("We may take judicial notice of the fact that the raising of citrus fruits is one of the great industries of the State of Florida."); L. Marcy, Inc. v. Mayo, 103 Fla. 552, 569, 139 So. 121, 128 (1932) ("[T]he citrus industry of Florida is one of its greatest assets."); Coca-Cola Co., Food v. State, 406 So. 2d 1079, 1086 (1982) ("the indisputably important role that the citrus industry plays in this state's economy . . .").

Department of Citrus reports that Florida citrus was valued at $2.7 billion wholesale in 1986-1987, and had a total economic impact of over seven billion dollars.[4] Florida's 623,568 acres of citrus[5] are spread over thirty-five of sixty-seven counties.[6]

The state leads the nation in citrus production — in the 1985-1986 crop year, Florida produced 7,727,000 tons of fruit as compared to California's 2,974,000 tons, Texas' 23,000 tons, and Arizona's 313,000 tons.[7] Sixty-nine percent of all of the oranges grown in the United States come from Florida.[8] Of the total world production of tangerines and oranges in 1985-1986, the United States ranks second only to Brazil.[9] Florida leads the world in grapefruit production with over ninety percent of the United States-produced grapefruit (2.1 million metric tons) coming from Florida.[10] With the discovery of frozen citrus concentrate[11] by researchers at Florida's Department of Citrus in 1943,[12] orange juice has become a staple in the American household, making frozen orange juice concentrate the major orange product of

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4. FLORIDA DEPT. OF CITRUS, FACT SHEET (1988). Over 180,000 people work in citrus-related industries. *Id.*

5. FACT SHEET, *supra* note 4. In 1970, total commercial citrus acreage in Florida was 941,471. ALMANAC, *supra* note 2, at 336. The reduction in acreage and citrus production is attributed to the four tree-killing freezes that hit Florida in the 1980's and citrus-canker problems in 1984. *See infra*, notes 37-48 and accompanying text.

6. Counties where citrus is grown commercially include: Alachua, Brevard, Broward, Charlotte, Citrus, Collier, Dade, DeSoto, Flagler, Glades, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lake, Lee, Manatee, Marion, Martin, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, St. Johns, St. Lucie, Sarasota, Seminole, Sumter and Volusia. ALMANAC, *supra* note 2, at 335.

7. FLORIDA AGRICULTURAL STATISTICS, CITRUS SUMMARY: 1985-86 5 (Jan. 1987).

8. FACT SHEET, *supra* note 4.

9. M. BROWN & J. LEE, WORLD ORANGE JUICE TRENDS 11-12 (Jan. 20, 1987).

10. FACT SHEET, *supra* note 4. Grapefruit was developed in Florida from a variant that reached Florida through the Caribbean — the Marsh, Foster and Thompson grapefruits originated in Florida between 1909 and 1930. FLORIDA DEPARTMENT OF AGRICULTURE, THE STORY OF FLORIDA CITRUS 2 (1969).

11. Concentrate is manufactured by extractors who extract the juice from the fruit, remove the water by evaporation, and freeze the remaining concentrate. Reconstituters later reconstitute the juice by adding water. UNITED STATES INTERNATIONAL TRADE COMMISSION, FROZEN CONCENTRATED JUICE FROM BRAZIL: DETERMINATION OF THE COMMISSION IN INVESTIGATION NO. 731-TA-326 (FINAL) UNDER THE TARIFF ACT OF 1930, TOGETHER WITH THE INFORMATION OBTAINED IN THE INVESTIGATION 2 (April 1987) [hereinafter cited as TRADE COMMISSION].

12. In 1942, the Citrus Commission budgeted $5,000 for the development of juice concentrate, and by 1944 concentrate plants began production to fill government orders. FLORIDA DEPARTMENT OF CITRUS, THE FIRST FIFTY YEARS OF THE FLORIDA CITRUS COMMISSION 25 (1986) [hereinafter cited as FIRST FIFTY YEARS].

Florida.[13] The economic importance of the citrus industry to Florida is evidenced by increased state and federal regulatory involvement, now concentrated upon the growing threat of foreign imports of frozen concentrated orange juice. Beginning in 1962, when a severe freeze greatly reduced Florida citrus production, Brazil's steadily increasing share of the United States frozen concentrated orange juice market has been dramatic. Unable to fill the United States demand for orange juice within the state during periods of freeze, citrus processors have looked to Brazil for plentiful supplies of lower-priced concentrate.

Although the availability of imported concentrate in times of scarcity has helped maintain a domestic orange juice market in the United States, the short term economic benefits flowing to processors from the foreign supply have not been enjoyed by Florida growers. This division in the industry has made protection and control more complicated. While Brazilian concentrate exporters are eager to maintain and increase their United States market share, the goal of the Florida citrus industry as a whole, including both growers and processors, is to use the foreign imports strictly as supplementary to the Florida supply.

This note will examine the immediate threat that Brazil poses to the industry[14] and the potential threats of Mexico and the Caribbean Basin.[15] Conversely, the benefits of foreign imports to the Florida citrus industry will be examined. Finally, measures that have been taken to limit the impact of foreign competition will be surveyed. The focus will be on imported frozen concentrated orange juice.[16]

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13. About 92% of Florida's 1986-1987 juice orange crop was processed. USDA OFFICE OF GOVERNMENT & PUBLIC AFFAIRS, USDA PRESS RELEASE 1 (Dec. 10, 1987). Retail orange juice sales for the 1986-1987 season were 858 million SSE (single strength equivalency) gallons, at a season average price of $3.34 per SSE gallon. FLORIDA DEPARTMENT OF CITRUS, FLORIDA CITRUS OUTLOOK UPDATE 1987-88 SEASON Table 3 (Mar. 1988) [hereinafter cited at CITRUS OUTLOOK].

14. Brazil has become Florida's number one competitor in the orange juice concentrate market. *See infra* notes 49-63, and accompanying text.

15. "Mexico and the Caribbean Basin Region are not strong competitors at this time and we do not expect that situation to change in the near future." Letter from Catherine A. Clay, Florida Department of Citrus Information Specialist (June 16, 1988). Although exports from Mexico and the Caribbean Basin Region do not currently threaten the Florida citrus industry, these two regions will be analyzed as potential rivals.

16. In his testimony before the Committee on Agriculture concerning the impact of imports on the United States fruit and vegetable industry, Bobby McKown, Executive Vice President of Florida Citrus Mutual, a voluntary cooperative group consisting of more than 12,134 growers, similarly narrowed his focus to imported orange juice, stating:

> Since more than 70% of Florida's orange production is channeled directly into orange juice, and the International Trade Commission has determined that orange

II. EARLY REGULATION

Regulation and protection of the fledgling industry and the citrus consumer began early, with an 1846 resolution by the Florida Senate and House of Representatives to study the prevention of orange tree diseases,[17] a 1911 law to prevent the sale and shipping of immature citrus fruit,[18] and a 1913 law setting up citrus maturity standards and providing for the appointment of state citrus inspectors.[19] In an act passed in 1925[20] the legislature provided specific guidelines for citrus inspection, and established a one-and-one-half cents per box fee to be paid to the Commissioner of Agriculture, with fines or imprisonment meted out to violators.[21] Laws enacted in 1927 and 1929 regulated the use of arsenic as a pesticide for citrus fruit,[22] and protection of the industry against the economic consequences of a freeze was instituted in 1927 when the legislature enacted a law permitting a joint declaration of a state of emergency following a freeze by the Commissioner of Agriculture and the Governor.[23]

Finally, in 1935, in an attempt to bring some centralized order to a citrus industry consisting of "disorganized individualists,"[24] the Florida legislature enacted a series of laws aimed primarily at governing the growing industry.[25] These laws established the Florida Citrus Commission,[26] a board composed of "12 practical citrus fruit men" within the Department of Citrus,[27] to "protect the public health and

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> growers and orange juice processors comprise a single industry producing orange juice as its primary commercial product, it is appropriate to examine imports of orange juice as an illustration of the impact of increasing fruit and vegetable imports on industry.

Testimony of Bobby F. McKown before the Subcommittee on Domestic Marketing, Consumer Relations, and Nutrition, Committee on Agriculture, U.S. House of Representatives 2 (May 10, 1988) [hereinafter cited as MCKOWN TESTIMONY].

17. 1846 Fla. Laws, Resolution No. 33.
18. Immature Citrus Fruit Law, Ch. 6236, 1911 Fla. Laws 205.
19. Ch. 6515, 1913 Fla. Laws 375.
20. Ch. 10103, 1925 Fla. Laws 162.
21. *Id.* §§ 5, 11, 1925 Fla. Laws at 164, 166.
22. Ch. 11844, 1927 Fla. Laws 172; Ch. 14485, 1929 Fla. Laws 937.
23. Ch. 11876, 1927 Fla. Laws 374.
24. FIRST FIFTY YEARS, *supra* note 12, at preface.
25. Remarkable industry growth was evident by as early at 1935. Figures show that the 1886-1887 crop year yielded 1,260,000 boxes of fruit; by 1919-1920, boxes totaled 13,928,000, and by 1933-1934, growers produced 28,812,000 boxes. FLORIDA AGRICULTURAL STATISTICS, CITRUS SUMMARY 1985-86 4 (Jan. 1987).
26. Ch. 16854, 1935 Fla. Laws 213.
27. FLA. STAT. § 601.04(1)(a) (1987).

welfare and to stabilize and protect the citrus industry of the state of Florida."[28] In 1949, all citrus laws were repealed and replaced by the Florida Citrus Code of 1949.[29] The new 1949 Code instituted few real changes from the 1935 laws, but additions to the Code over the last thirty-five years have created protective provisions[30] and specific standards,[31] making the Florida Citrus Code a powerful tool in nurturing, sheltering and regulating the citrus industry.

Protection and promotion of the citrus industry has been long upheld as a valid exercise of the state's police power.[32] In a recent decision upholding a required designation of origin for Florida grown grapefruit, the Florida Supreme Court stated that,

> If Citrus is not identified as being of Florida origin, then the money spent encouraging consumers to buy Florida citrus will be for naught. Those consumers favorably impressed with [the Department of Citrus'] advertising campaign will

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28. Ch. 16854, § 1.a, 1935 Fla. Laws 213.

29. Ch. 25149, 1949 Fla. Laws 281.

30. *See, e.g.*, FLA. STAT. § 601.091 (1987) (setting the boundaries for the Indian River production area to protect Indian River fruit by prohibiting those outside the area from falsely labeling their fruit "Indian River"); *id.* § 601.13 (providing for on-going citrus research); *id.* § 601.15 (giving the Department of Citrus broad powers to promote and advertise Florida citrus and to collect an excise tax on each box of citrus moved through commercial channels); *id.* § 601.154(3)(a). The Citrus Stabilization Act of Florida allows the Citrus Commission to issue with proper notice any marketing order that will have the following effects:

> 1. Return to producers of oranges, grapefruit, tangerines, or citrus hybrids in Florida at least average cost of production.
>
> 2. Prevent the unreasonable or unnecessary waste of the wealth of the orange, grapefruit, tangerine, or citrus hybrid industry and of the economy of the state.
>
> 3. Protect the interests of consumers of oranges, grapefruit, tangerines, or citrus hybrids and the products thereof.

Id. § 601.155 (an equalizing excise tax that is required of "the first person who exercises in this state the privilege of processing, reprocessing, blending, or mixing processed orange . . . or grapefruit products or the privilege of packaging or repackaging [the same] into retail or institutional size containers. . . .").

31. *See, e.g.*, FLA. STAT. §§ 601.16-.18 (1987) (setting up detailed standards for maturity, minimum ratios of solids to acid and minimum juice content for grapefruit); *Id.* §§ 601.19-.20 (1987) (standards for orange maturity and minimum ratios of solids to acid).

32. *See, e.g.*, Sligh v. Kirkwood, 237 U.S. 52 (1915) (upholding a 1911 Florida statute forbidding the sale or shipment of immature citrus fruit); Snively Groves, Inc. v. Florida Citrus Comm'n, 23 F. Supp. 600 (N.D. Fla. 1938) (upholding a regulation setting standards for citrus fruit containers); C.V. Floyd Fruit Co. v. Florida Citrus Comm'n, 128 Fla. 656, 175 So. 248 (1937) (upholding an advertising tax on citrus); Flake v. State Dept. of Agric., 383 So. 2d 285 (Fla. 5th. D.C.A. 1980) (allowed quarantine of suspected diseased fruit trees); Coca-Cola Co., v. State, 406 So. 2d 1079 (1982) (upholding a rule requiring declaration of state origin on grapefruit products grown and processed in the state).

> be unable to determine which citrus is from Florida, and will be just as likely to purchase grapefruit from California, Arizona, Mexico, Brazil, etc., as from this state. The increasingly stiff competition facing our state from other citrus producing locales justifies this measure intended to promote consumption of *Florida* citrus.[33]

Thus, the Florida Citrus Code, born out of police power[34] and case law[35] gives the legislature enormous discretion in applying the Code and acts as a buffer, protecting the valuable citrus industry.

Unfortunately for Florida growers, however, the legislature has never been able to legislate the Florida weather. While the State of Florida can regulate the sale and use of freeze-damaged fruit,[36] and can control canker infestation, foreign competition arising from shortages in Florida citrus production due to freezes and disease are proving much harder to combat. Between 1980 and 1986, a succession of serious freezes destroyed 400,000 acres of citrus trees.[37] The freezes occurred in the 1980/81, 1981/82, 1983/4, and 1984/85 crop years,[38] causing a 39 percent decrease in Florida's orange juice production between 1979-1980 and 1986-1987.[39] The first three freezes of the 1980's caused major orange loss, and weakened the trees; the 1984/85 freeze, considered the worst freeze of the century,[40] hit the already weakened trees hard, devastating thousands of acres of citrus.[41] There was a 35 percent

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33. Coca-Cola Co. v. State, 406 So. 2d 1079, 1082-1083 (1982) (emphasis in original).

34. FLA. STAT. § 601.02(1) (1987). The purpose of the Code is stated: "[i]n the exercise of the police power to protect health and welfare and to stabilize and protect the citrus industry of the state."

35. *See supra* note 32.

36. FLA. STAT. §§ 601.89-.901 (1987).

37. Adams, *Orlando Lab Puts Freeze Squeeze on Florida Citrus Problems*, 36 AGRIC. RES. 6 (Jan., 1988).

38. A crop year in Florida is from December 1 through November 30. TRADE COMMISSION, *supra* note 11, at 17.

39. Adams, *supra* note 37, at 7.

40. University of Florida Professor Peter Waylen analyzed meteorological data, and concluded that severe frosts hit Florida about every twenty-two years — the state's five worst freezes occurred in 1895, 1917, 1940, 1962, and 1985. *A 22-Year Cycle of Killer Frosts*, FLORIDA TREND, Mar., 1988, at 61. Citrus damage occurs when temperatures drop below twenty-eight degrees Fahrenheit (28°) for six hours or longer. Miami Herald, Dec. 26, 1983, at 1A, col. 3.

41. FIRST FIFTY YEARS, *supra* note 12, at 408. The freeze struck January 21-23, 1985. By January 24th., the Commission had ordered a seven day embargo on the sale and processing of citrus followed by a 14 day shipping ban on freeze damaged fruit. Miami Herald, Jan. 25, 1985, at 1A, col. 2.

decline in total Florida bearing acreage from the 1982/83 to 1985/86 seasons due directly to the tree killing frosts.[42]

The recurrent freezes prompted many citrus growers in northern sections of Florida to migrate to the south; others, betting that the freezes had come to a temporary halt, began the laborious job of replanting.[43] Replanting was made even more difficult by the next citrus disaster to hit Florida — citrus canker. The bacterial disease was first discovered in 1984 in an Avon Park, Florida, nursery;[44] in 1986, the disease was reported on mature trees in the St. Petersburg area.[45] Citrus canker is a highly contagious citrus tree disease that can be eradicated only through destruction of all infected or exposed plants. By 1986, when many growers were working to replant groves destroyed by the cold, over twenty million seedlings infected by the canker had been burned.[46] This greatly slowed the replanting effort, and prevented the industry from achieving a fast come-back. Newly planted groves take from three to five years to begin producing, and full production is not reached until at least seven to ten years after the seedlings are planted.[47] In the spring of 1987, with the first mild winter in four years behind them and citrus canker under control, hopeful citrus growers hastened to replant.[48]

III. BRAZIL AND THE FLORIDA CITRUS INDUSTRY

Reduction of the domestic orange crop due to freezes and canker, coupled with an increase in United States orange juice consumption,[49] resulted in United States growers being unable to fill the demand for orange juice with Florida fruit. Therefore, United States processors[50] reached out to other countries for the concentrate they needed.[51] The main source for the orange juice that the stricken Florida citrus industry could not provide was Brazil.

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42. TRADE COMMISSION, *supra* note 11, at R-33, table 10.

43. Daniels, *The Legacy of a Citrus Freeze*, N.Y. Times, June 8, 1985, at 37, col. 1.

44. *Desperate Measures in Florida*, TIME, Sept. 30, 1985, at 67.

45. Winsberg, *The Changing Florida Orange Industry*, FOCUS, Winter, 1986, at 30.

46. *Id.*

47. Daniels, *supra* note 43; Berman, *Orange Crush*, FORBES, Jan. 13, 1986, at 50.

48. *Florida Citrus Growers Ready to Expand*, J. COM, Mar. 18, 1987, 12A, col. 5.

49. Letter from Catherine Clay, *supra* note 15.

50. Processors, or extractor-processors, are firms that extract and concentrate orange juice from U.S. oranges when U.S. oranges are available. Firms that import or purchase concentrate for blending, reconstitution or remanufacture are called reconstitutors or purchaser-processors. TRADE COMMISSION, *supra* note 11, at R-17.

51. Letter from Catherine A. Clay, *supra* note 15. In 1985, Florida could provide only 50% of all United States consumed orange juice. *Id.*

Brazil, now the world's leading producer of orange juice concentrate, got its start exporting frozen concentrate less than thirty years ago after the disastrous Florida freeze of 1962.[52] In 1961, Brazil's exports of concentrate totaled only one ton;[53] during the first eight months of the 1987/88 season,[54] estimates are that Brazil exported about 190 million forty-two degree (42°) Brix[55] gallons of frozen concentrated orange juice,[56] over 90 percent of the total world's exports of concentrate.[57] From the 1980/81 season through the 1986/87 season, Brazil's percentage of the total United States retail orange juice market jumped from 19 percent to nearly 44 percent.[58] Clearly, Brazil has seized the opportunity to dominate the valuable United States orange juice market. Brazil has made enormous strides in capturing other overseas markets as well: in 1984, the European Economic Community imported 273,261,900 SSE[59] gallons of frozen concentrated orange juice from Brazil compared with only 19,848,700 SSE gallons from the United States.[60] Brazilian producers have recently entered into an agreement with the USSR state agricultural committee Gosagroprom to export orange juice concentrate into the Soviet Union,[61] and the Brazilian Association of Citrus Juice Manufacturers is negotiating with an Italian association in an attempt to open another new market to Brazilian orange concentrate exporters in Italy.[62] With predictions of increased production from both Florida and Brazil, the long-term outlook is for a combined Brazilian-Floridian production increase of almost 40 percent by the year 2000.[63] Competition for new markets for orange juice will be keen as supplies increase. Expanded acreage and improved technology could lead to a serious orange juice glut unless Florida and Brazil work together to increase world markets instead of battling over existing ones.

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52. Whitefield, *Orange Wars*, Miami Herald, June 7, 1987, at 2F, col. 5.

53. *Id.*

54. The Brazilian crop year is from July 1 through June 30; the United States crop year is from December 1 through November 30. TRADE COMMISSION, *supra* note 11, at R-99.

55. The Brix value is the amount of sugar expressed in percent by weight of solids. A Brix degree is a measurement unit for the amount of concentration of fruit juices. *Id.* at R-13.

56. CITRUS OUTLOOK, *supra* note 13, at 2.

57. Cohen, *Citrus King: Brazil's Jose Cutrale, Helped by Coca-Cola, Is Taking on Florida*, Wall St. J., Jan. 22, 1987, at 1, col. 6.

58. MCKOWN TESTIMONY, *supra* note 16, at 2.

59. Single strength equivalency.

60. M. BROWN & J. LEE, *supra* note 9, at Table 9.

61. Charters, *Vodka Awaits Brazil's Oranges*, Financial Times of London, Sept. 25, 1987, *as cited in* ISLA, #1723, at 316.

62. Turner, *Brazil in Italian Orange Juice Venture*, Financial Times of London, Oct. 29, 1987, *as cited in* ISLA, #2302, at 361.

63. Koenig, *The Big Thaw in Citrus*, FLORIDA TREND, Mar., 1988, at 58.

The meteoric rise of Brazil's frozen concentrate industry has been aided by government commitment to strengthen Brazil's returns in the international marketplace. As the Third World's largest debtor nation, Brazil has struggled under the burden of servicing its huge foreign debt.[64] Brazil's foreign debt, approximately $110 billion in total loans,[65] has played a key role in determining its foreign trade policy. Before 1984, when export subsidies were greatly decreased, grower and processor subsidies and other strong export incentives, coupled with strict import controls, were used by the Brazilian government to boost exports in an attempt to improve the balance of payments.[66] Other methods used to assist citrus growers included price control, subsidized credit, interest-free loans for the purchase of fertilizer and low interest rates for other production expenses.[67] Assistance to processors included duty-free imports of equipment for citrus processing plants and subsidized credit for new factory equipment.[68] Another powerful government control was the issuance of export licenses by the Foreign Trade Department of the Bank of Brazil. Shippers of juice concentrate had to have an export license for each shipment that left Brazil, giving the government some measure of control over the exported product.[69] In 1979, in an attempt to slow Brazil's runaway inflation rate, former President Figueiredo removed many of the export incentives, and devalued the cruzeiro by 30 percent.[70] Tax credits were eliminated in December of 1979 to conform to GATT standards,[71] but were reinstituted from 1981 to 1984.[72]

In 1985, after twenty-one years of military rule, Brazil returned to a democratic government headed by President José Sarney.[73] High hopes for the new government have disintegrated in the face of a 600

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64. Blustein, *Brazil's High-Stakes Debt Talks: Throwing Good Money After Bad?*, Washington Post, May 24, 1988, at C1, col. 3.

65. *Id.*

66. UNITED NATIONS, TRADE RELATIONS BETWEEN BRAZIL AND THE UNITED STATES 47 (1985).

67. U.S. DEPARTMENT OF AGRICULTURE, BRAZIL'S ORANGE JUICE INDUSTRY 13 (Apr., 1980).

68. *Id.* at 14.

69. *Id.* at 15.

70. U.S. DEPARTMENT OF AGRICULTURE, BRAZIL: AGRICULTURE AND TRADE POLICIES 9 (1981).

71. *Id.* at 10. Brazil joined GATT in 1948. In accord with the GATT Subsidy Code, Brazil agreed to eliminate the subsidized tax credit program that had been in place since 1969. Final expiration date was June 30, 1983, but Brazil voluntarily abolished the tax credit program in 1979. UNITED NATIONS, *supra* note 66, at 55.

72. UNITED NATIONS, *supra* note 66, at 55-6.

73. Riding, *Ailing Brazil is Divided on Economy*, N.Y. Times, May 31, 1988, at D8, col. 1.

percent annual inflation rate, rising unemployment, growth at under 2 percent, and allegations of corruption in the Sarney administration.[74] A general price freeze introduced in February of 1986 as part of the Cruzado Plan temporarily slowed Brazil's inflation, but a concurrent rise in the minimum wage led to an unrestrained increase in consumer spending. At the same time, government spending escalated.[75] Store inventories were quickly depleted by waves of shoppers intent on taking advantage of the frozen prices and the 23 percent increase in disposable income. Since scarce items could be found on a black market uncontrolled by the government price freeze, the Cruzado Plan did not have the desired effect, and by the end of 1986 inflation began to rise.[76]

When President Sarney imposed a moratorium on foreign debt repayment in February of 1987, funds and credit lines were withdrawn by the stunned international lending community, causing great hardship in Brazil. Recent steps to end the moratorium, virtual elimination of required export licenses and subsidies, and reduced import tariffs, are encouraging signs that Brazil is trying to pull itself out of an enconomic quagmire.[77] Brazil's newest approach to reducing the staggering interest rates on its loans was finalized in June of 1988 — in exchange for payment of overdue interest from March, April, and May, foreign creditor banks will reduce the interest rate they have been charging on Brazil's medium-term loans, and will provide new loans. It is hoped that the lower interest on certain of its loans will permit Brazil to meet its interest payments on all of its debt.[78]

Thus, the rapid development of the Brazilian citrus industry must be viewed against a back-drop of export expansion born of the need for foreign exchange earnings[79] to service a huge foreign debt in a time of deep economic recession and political change. Heavy investment in the industry has paid off for Brazil,[80] rocketing it from its

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74. Bridges, *Brazil's Bittersweet Democracy*, Christian Science Monitor, May 25, 1988, at 7, col. 3.

75. FLORIDA DEPARTMENT OF CITRUS, BRAZILIAN CITRUS SITUATION AND OUTLOOK: 1986-87 AND 1987-88 SEASONS 3 (May 19, 1987).

76. *Id.* Brazil's inflation rate dropped from 235.1% in 1985 to 62.4% in 1986 when the Cruzado Plan was first instituted. By 1987, however, inflation had soared to 400%. *Id.* at Figure 2.

77. Blustein, *supra* note 64, at C5, col. 3.

78. Berg, *Brazil Debt Pact Called Innovative*, N.Y. Times, June 23, 1988, at D9, col. 2.

79. In 1986, Brazil earned $352.3 million in foreign exchange monies from citrus concentrate alone. Bruce, *High-Tech System Speeds Brazilian Exports of O.J.*, J. COM., Mar. 24, 1987, at 8A, col. 1.

80. By 1987, over $1.5 billion had been invested in orange processing factories in Sao Paulo State, Brazil's major producing region. Cohen, *supra* note 57, at 1, col. 6.

meager beginnings in the early 1960's to its undisputed place as the world's largest orange concentrate producer. Brazil is a formidable competitor with the Florida citrus industry, both inside the United States and in outside world markets. With cheaper land and labor costs, plus a favorable frost-free climate, Brazil has an impressive initial edge. Added to that is Brazil's citrus technology, modeled after the Florida industry, which the Florida Department of Citrus terms "state-of-the-art."[81] Brazil's bulk tanker system for shipping frozen orange juice concentrate was originated by Cargill Agricola, a major Brazilian processor-exporter of concentrate. The two leading Brazilian processor-exporters of concentrate, Citrosuco Paulista S.A. and Sucocitrico Cutrale S.A.,[82] lease from a fleet of six tanker ships[83] with an annual shipping capacity of about 650,000 metric tons.[84] Refrigerated and pressurized tanker trucks transport concentrate from the processing plants' storage tanks to dock-side tanks in Santos, Brazil's largest port, or Guaruja. Orange juice pipelines link the storage tanks to the tanker ships. Computerized loading and unloading of concentrate directly into tanks as opposed to traditional shipment in barrels saves both time and money. Concentrate is loaded into the refrigerated holds of tanker ships, then unloaded in the United States and Europe in terminals similar to those in Brazil, and operated by Brazilian exporters.[85]

Brazil's sophisticated transport system, ultra-modern orange juice processing plants, and enormous tank farm storage capacity in the United States and in Europe,[86] are all factors that have helped catapult Brazil to the forefront of the frozen concentrate market. Despite a variety of measures taken by both federal and state governments in the United States to reduce the impact of Brazil's exported concentrate,[87] Brazilian orange juice processing costs continue to undercut Florida's costs.[88] Executive Vice President of Florida Citrus Mutual, Bobby F. McKown, points to the importance of higher production per acre in Florida to compete against the Brazilian orange juice superstructure.[89] The 1987/88 season was a disappointing one for Brazil,

81. BRAZILIAN CITRUS SITUATION, *supra* note 75, at 1.

82. Whitefield, *supra* note 52, at 2F, col. 5.

83. Bruce, *supra* note 79, at 8A, col. 1.

84. BRAZILIAN CITRUS SITUATION, *supra* note 75, at 2.

85. Bruce, *supra* note 79, at 8A, col. 2.

86. The Florida Department of Citrus estimates that Brazil's storage capacity in the United States and Europe is over 90,000 metric tons. BRAZILIAN CITRUS SITUATION, *supra* note 75, at 2.

87. *See infra* notes 146-172, and accompanying text.

88. MCKOWN TESTIMONY, *supra* note 16, at 4-5.

89. Koenig, *supra* note 63, at 60.

with twenty to forty million boxes of oranges less than predicted.[90] A drought hit Brazil in July, August and September of 1987, resulting in smaller-sized fruit, and a lower yield. Poor grove care, due to lower profit margins and supply shortages the past two years, led to heavier fruit droppage.[91] Some of the benefits reaped by Brazil during the early to mid-eighties will now go to Florida growers, as Brazilian shortfalls push the price of oranges up almost eighty percent.[92] This temporary windfall is good news for Florida growers whose groves survived the bad freeze years, but long range estimates by the Department of Citrus show that Brazilian orange production could increase to almost three hundred million boxes by 1996/97.[93]

IV. Mexico and the Florida Citrus Industry

Although Mexico supplied about 70 percent of all fresh citrus imports into the United States in the late 1970's and early 1980's, Mexican exports of orange juice have been minimal. In 1985, Brazil supplied 96.7 percent of the total United States' imports of frozen concentrated orange juice. Of the remaining 3.3 percent, 48 percent of the United States' imports came from Mexico in 1985, down from 95 percent in 1983.[94] The drop reflects freezes, canker, and United States' restrictions on imports of EDB-contaminated fruit that reduced the Mexican orange crop between 1983 and 1985.[95] Before the 1983 freeze, Mexican orange juice processors, realizing the potential in exported concentrate, made substantial investments in orange juice plants, investments that they hope will begin to pay off as production increases.[96] Mexican processors feel confident that they have two key advantages over the Brazilians in orange juice production — Mexican juice reportedly has a better color and higher Brix ratio and Mexico is in closer proximity to western United States markets. Mexico also benefits from low labor costs and relatively inexpensive land. Unlike Brazil, however, Mexico depends more heavily on imported technologies for

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90. Brazil's orange production for the 1987-88 season, originally estimated to be somewhere between 240 to 260 million boxes, remained the same as the year before at 220 million boxes. Florida Department of Citrus, Brazilian Citrus Situation and Outlook: 1987-88 & 1988-89 Seasons 1 (May 11, 1988).

91. *Id.* at 1.

92. Koenig, *supra* note 63, at 60.

93. M. Brown & J. Lee, *supra* note 9, at 25.

94. *Id.* at 12-13.

95. United States Department of Agricultural Foreign Agricultural Service, Citrus, Mexico 1 (Dec. 2, 1987).

96. *Id.*

citrus production[97] and has a growing domestic market that demands much of the juice that would otherwise be exported.[98] Processors have aimed towards developing this domestic market due to its relative price stability as opposed to the wildly unpredictable world market.

Like Brazil, Mexico has been battling against a huge foreign debt, $105.3 billion, and a high annual inflation rate, 159.2 percent at the end of December, 1987.[99] Because of a perceived need to cut imports and boost exports to provide foreign currency reserves to meet payments on the foreign debt, Mexico has used both direct and indirect subsidies ranging from tax exemptions to below-market interest rates. Mexico entrenchment in trade nationalism, with its emphasis on limited imports and subsidized exports, may be giving way in the face of a recent United States-Mexican "understanding" signed in November of 1987.[100] The two countries have embarked upon more liberalized bilateral trade relations in establishing trade dispute mechanisms, and in opening both markets to increased trade.[101]

Mexico's tactics to reduce inflation and cut its foreign debt have had mixed results. In December of 1987, Mexico adopted an anti-inflationary program, the Economic Solidarity Pact [Pact] that has as its goal a 1 to 2 percent monthly inflation rate by the end of 1988.[102] Much of the Pact reflects the increased emphasis on trade liberalization that is evident in the United States-Mexican "understanding"; specifically increased imports, limited wage demands by labor, and reduced governmental spending. The Pact, initiated by the de la Madrid administration, will be adhered to by the newly elected President Carlos Salinas de Gortari in hopes that it will help lead the country out of economic depression. A freeze on prices of government-controlled items, wages and the monetary exchange rate, in conjunction with the Pact's other inflationary measures, have resulted in lower inflation in February, March, and April of 1988.[103]

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97. S. SANDERSON, THE TRANSFORMATION OF MEXICAN AGRICULTURE: INTERNATIONAL STRUCTURE AND THE POLITICS OF RURAL CHANGE 57 (1986).

98. CITRUS IN MEXICO, *supra* note 95, at 1. Twenty-five to 30% of the frozen concentrated orange juice output is absorbed by the domestic market. *Id.* at 27.

99. Whitefield, *Mexico's Dragon: Roaring Inflation*, Miami Herald, Apr. 18, 1988, Business Monday, at 17, col. 1.

100. Orme, *U.S.-Mexican 'Understanding' Seen as Sign of Economic Integration*, J. COM., May 16, 1988, *as cited in* ISLA, #3026, at 24.

101. *Id.*

102. Rubio, *Mexico Takes On Inflation*, J. COM., Mar. 2, 1988, at 8A, col. 1.

103. *Mexico Will Extend Freeze on Prices Through August*, Wall St. J., May 24, 1988, at 35, col. 1.

Less successful has been the Mexican debt-for-bond trade aimed at reducing the foreign debt. Although early reports of the innovative plan hailed it a "qualified success,"[104] later analysis revealed that there was only a $1.1 billion reduction where over $10 billion had been anticipated.[105] The plan involved offering commercial banks a trade — their Mexican debt holdings in exchange for twenty-year zero-coupon bonds issued by Mexico and backed by United States Government Treasury bonds. After the disappointing results of the debt-for-bond swap, Mexico began work on other debt reduction methods which it plans to present to banks sometime in late 1988. President Salinas proposes a firm negotiation stance towards cutting the debt principal to reduce interest payments.[106] Like other Latin American debtors,[107] however, Mexico continues to struggle in the absence of significant and successful debt relief.

How the developing Mexican frozen concentrate industry will be affected by Mexican trade liberalization and other tactics newly elected President de Gortari may take remains to be seen. In 1987, Mexican foreign currency reserves doubled to $13.7 billion, boosted largely by a private export drive, and the private sector trade surplus tripled.[108] Private manufacturer's export earnings rose 39 percent. Even without Mexican subsidization, there are profits to be made. However, with an increasing domestic market in orange juice, and an uncertain foreign market, Mexican orange processors are likely to pass up the temptation to compete head-on with Brazil for the lucrative United States' market, and concentrate largely on internal demand.

V. THE CARIBBEAN BASIN INITIATIVE AND THE FLORIDA CITRUS INDUSTRY

Under the Caribbean Basin Economic Recovery Act [hereinafter Act], signed by President Reagan on August 5, 1983,[109] new trade and

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104. Truell, *Mexico's Plan to Lower Debt Seems a Success*, Wall St. J., Feb. 26, 1988, at 2, col. 2.

105. Bennett, *Lesson on Mexican Debt*, N.Y. Times, Mar. 5, 1988, at 35, col. 1.

106. Truell & Moffett, *Mexico Works on Less-Ambitious Plans with J.P. Morgan to Cut Foreign Debt*, Wall St. J., May 25, 1988, at 4, col. 2.

107. Latin American debtor nations include Brazil ($113 billion), Mexico ($108 billion), Argentina ($54 billion), Venezuela ($32 billion), Chile ($20 billion), Columbia ($16 billion), and Peru ($15 billion). Riding, *For Latin America, Its the Decade of Unsupportable Debt*, N.Y. Times, Mar. 6, 1988, at 2E, col. 2, *quoting* U.N. Economic Commission for Latin America and the Caribbean.

108. Orme, Jr., *Mexico's Exporters Thrived Last Year*, J. COM., Apr. 29, 1988, at 7A, col. 5.

109. Caribbean Basin Economic Recovery Act, Pub. L. No. 98 67, 97 Stat. 369 (1983) [hereinafter cited as CBI].

tax measures were instituted to provide expanded opportunites in the Caribbean Basin Region.[110] The Reagan administration hoped that by eliminating United States tariffs on most Caribbean Basin exports to the United States, the resulting increase in economic productivity would help pull the Caribbean nations out of massive economic difficulties that included high inflation, declining growth and rising unemployment.[111] An initial $350 million aid package, plus duty free exports, and a tourism incentive provision to allow for tax deductions of business conventions held in the region were predicted to provide the Caribbean Basin Intiative [hereinafter CBI] beneficiaries the tools with which to overcome their economic problems.[112] However, because the CBI has had disappointing results for most of its intended beneficiaries,[113] the Subcommittee on Trade of the House Committee on Ways and Means began hearings at the end of 1987 on a proposed Caribbean Basin Economic Recovery Expansion Act of 1987.[114] Florida's agricultural sector has strongly opposed the proposed changes out of fear that Florida farmers will be faced with the strong competition of Caribbean nations having increased access to United States' markets.[115]

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110. The twenty-seven developing countries under the protective umbrella of the Act include: Anguilla, Antigua and Barbuda, The Bahamas, Barbados, Belize, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Nicaragua, Panama, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Cayman Islands, Montserrat, Netherlands Antilles, Saint Christopher Nevis, Turks and Caicos Islands, British Virgin Islands. *Id.* § 212(b).

111. H. ERISMAN, *Contemporary Challenges Confronting U.S. Caribbean Policy*, in THE CARIBBEAN CHALLENGE: U.S. POLICY 11-3 (1984).

112. In President Reagan's 1982 message to Congress concerning the proposed Caribbean Basin Initiative, he stated:

> [A] key principle of the program is to encourage a more productive, competitive and dynamic private sector, and thereby provide the jobs, goods and services which the people of the Basin need for a better life for themselves and their children. All the elements of this program are designed to help establish the conditions under which a free and competitive private sector can flourish.

President's Message to Congress on the Caribbean Basin Initiative, 18 WEEKLY COMP. PRES. DOC. 323, 326 (Mar. 22, 1982). *But see* H. ERISMAN, *supra* note 111, at 15-6, arguing that the real motive behind the CBI was to promote private U.S. investment and to assist the U.S. business community with favorable trade policies from the beneficiary nations.

113. Trade between the United States and the beneficiaries has actually decreased since the Act went into effect in 1983 — from $14.2 billion in 1983 to $12 billion in 1986. *Bill Would Improve Caribbean Basin Plan*, J. COM., Sept. 28, 1987, *as cited in* ISLA, #555, at 229.

114. *Panel to Study Caribbean Basin Act*, J. COM., Dec. 9, 1987, at 5A, col. 3.

115. Rachid, *U.S. Opposition Grows to Caribbean Aid Bill*, J. COM., Sept. 1, 1987, at 4A, col. 2.

Current argicultural opposition to the proposed changes is not surprising given the fact that resistance to the initial CBI by Florida citrus growers was strong.[116] The CBI has as its nucleus a one-way free trade program scheduled to last twelve years (until September 30, 1995) for certain goods produced by eligible beneficiaries.[117] Goods excluded from the duty-free treatment include textiles and apparel, footwear and other leather goods, canned tuna, petroleum and petroleum products, and watches with parts from certain communist countries.[118] The 1987 proposed changes would expand the duty-free treatment to include some of the products that the CBI excludes.[119] One of the major provisions of the CBI is the rule of origin requirements that eligible products must meet in order to qualify for duty-free treatment.[120] Eligibility under the Act requires that the article be grown, produced or manufactured in a beneficiary country.[121] It must also be imported directly from a beneficiary country,[122] have a cost or value of at least 35 percent local content,[123] and must be either wholly grown, produced or manufactured by a beneficiary or have undergone a substantial transformation that has created "a new or different article of commerce."[124] To help protect the domestic citrus industry from the reconstituting of Brazilian frozen concentrated orange juice in the Basin to avoid the United States tariff, the Act states, "no article or material of a beneficiary country shall be eligible for such treatment by virtue of having merely undergone — (A) simple combining or packaging operations, or (B) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. . . ."[125]

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116. *See* Caribbean Basin Initiative: Hearings on S. 2237 Before the Subcommittee on Trade of the House Committee on Ways and Means, 97th Cong., 2d Sess. 189-190 (1982). (Bobby F. McKown, Florida Citrus Mutual, spoke to Chairman Gibbons of the concerns of Florida citrus growers that the Caribbean Basin Initiative would allow non-CBI beneficiaries, notably Brazil, to funnel frozen concentrate through the Caribbean Basin, avoiding the U.S. tariff on orange juice.)

117. CBI, *supra* note 109, §§ 211, 212(b), 213, 218(b).

118. *Id.* § 213(b)(1-5).

119. Whitefield, *Trade Proposal May Sweeten For Caribbean: Congress Considers Broadening Initiative*, Miami Herald, Oct. 26, 1987, Business Monday, at 18, col. 4.

120. CBI, *supra* note 109, § 213(a)(1-3).

121. *Id.* § 213(a)(1).

122. *Id.* § 213(a)(1)(A).

123. *Id.* § 213(a)(1)(B). However, United States manufactured materials may contribute 15% of the required 35%, leaving only 20% direct cost of processing to be supplied by the benficiary. *Id.* § 213(a)(1)(B)(ii).

124. *Id.* § 213(a)(2).

125. *Id.*

Despite the existence of safeguards in the CBI that should act to protect the Florida citrus industry, growers are worried about the potential impact of the present Act[126] and the proposed changes that would expand and extend the program to the year 2007. Industry concerns include fears that:

> 1. Brazil will attempt to by-pass the United States tariff on orange juice by going through the region;
> 2. Caribbean Basin citrus production will increase to the point of being a real competitive threat;
> 3. United States' investors beginning or relocating citrus operations in CBI countries will be able to compete directly against Florida growers; and
> 4. Caribbean Basin agricultural imports will carry disease and insects into Florida.[127]

So far these concerns have proven groundless. Trade has not increased as expected; in fact, only six of the twenty-seven beneficiary nations reported any increase in the value of their United States exports in 1987, and those increases were due largely to garment exports.[128] United States orange juice imports from CBI countries did increase from pre-duty-free market amounts ranging from zero to 2.475 million SSE gallons to 5.4 million SSE gallons in the first ten months of 1984-85,[129] but compared with Brazil's 1984-85 exports of 246.5 million gallons, the present Caribbean Basin threat is minimal. Although there has been some initial United States private investment in the area, development of citrus groves is a long-term project, and the current 1995 cut-off date is discouraging to American growers looking at eight to ten years before trees reach full productivity.

One example of corporate vascillation in the face of resistance by environmentalists and problems encountered with planting citrus in the Caribbean Basin is the experience of the Coca-Cola Foods Division, Inc., makers of Minute Maid citrus products. In 1985, Coca-Cola an-

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126. For interesting overviews of the feared competitive threat of CBI imports, *see* Polopolus, *The Caribbean Basin Initiative and its Potential Impact Upon Agriculture in South Florida*, FOOD AND RESOURCE ECONOMICS DEPARTMENT STAFF PAPER 285 (Aug., 1985); FLORIDA DEPARTMENT OF CITRUS, THE CARIBBEAN BASIN INITIATIVE AND THE FLORIDA CITRUS INDUSTRY (Oct., 1985).

127. *Id.*

128. James, *U.S. Imports From Caribbean Remain at Stagnant Levels*, J. COM., Apr. 15, 1988, at 4A, col. 4.

129. FLORIDA DEPARTMENT OF CITRUS, THE CARIBBEAN BASIN INITIATIVE AND THE FLORIDA CITRUS INDUSTRY, *supra* note 126, at 30.

nounced plans to plant 25,000 acres of citrus in Belize.[130] The corporation purchased over 700,000 acres of land from Belize Estate and Produce Co., Ltd., the largest orange juice exporter of all the CBI countries, and it projected planting within seven years, and the construction of a processing plant within fifteen years.[131] By January of 1988, Coca-Cola had put its plans to plant citrus on "indefinite hold," and was determined to sell 96,000 acres, and give away an additional 50,000 acres.[132] Other growers have faced similar roadblocks to Caribbean Basin citrus production, with reports of problems ranging from the lack of supportive technology in the region to a sluggish governmental bureaucracy that brings action to a halt.[133]

Although there is no danger of frost, labor costs are low and land relatively inexpensive. More than warm weather, cheap labor, and land are required to make citrus production cost competitive. Technological innovations in citrus production must be imported, and expansion in production and processing capacity may be limited. Internal transportation facilities tend to be inadequate, and transportation from the region to the United States must be factored into the cost. Unlike the broad acreage available for planting in Florida and Brazil, the land in Central American countries is largely mountainous or swampy.[134] Excessive rainfall in the region makes production of high quality Brix and sugar acid ratio for orange concentrate difficult, and other growing problems include excessive weed growth, plant disease and lack of insect control.[135] The Florida Department of Citrus concludes that while the competition from the Caribbean region does not pose a real present threat, the potentiality of increased plantings and future production in the wake of a possible expansion of the Act should not be ignored.

VI. Protection Against Imports

Since the mid-nineteenth century, the Florida legislature has acted to protect the growing Florida citrus industry from the effects of

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130. Brown, *Coca-Cola Plans Citrus Venture in Central America*, 57 FEEDSTUFFS 4 (Dec. 2, 1985).

131. *Id.*

132. *Coca-Cola Plans to Sell its Acreage in Belize*, J. COM., Jan. 20, 1988, at 4A, col. 1.

133. Unpublished introductory comments of Dr. William Grierson at the Florida State Horticultural Society Meeting, Tampa, November 1985, as reported by grower William Mathews in telephone interview (June 28, 1988).

134. FLORIDA DEPARTMENT OF CITRUS, THE CARIBBEAN BASIN INITIATIVE AND THE FLORIDA CITRUS INDUSTRY, *supra* note 126, at 30.

135. *Id.* at 31.

disease, sale of immature fruit, use of harmful pesticides, and freezes.[136] Considering this past history of regulation for consumer and industry protection, it is not surprising that the industry has reacted against foreign imports in various ways calculated to maintain the image of Florida as the citrus state with the best citrus products.[137] While protection of the Florida citrus industry against future imports of Brazilian citrus concentrate was dismissed by the Florida Citrus Commission as unneeded in 1968, by 1976 the growing threat posed by Brazil was starting to be taken seriously.[138] Beginning in the early 1980's, the industry, represented by the grower cooperative association Florida Citrus Mutual, moved to combat foreign competition by successfully seeking import relief under United States trade laws. In addition, Florida has imposed taxes on imported citrus products, created new programs to help guarantee to the consumer that the purchased juice is high quality, or 100 percent Floridian, initiated a European Three Party Program to promote the consumption of Florida citrus products in Europe, and supported federal government requirements "that imported agricultural products be subject to the same environmental and health regulations as U.S. products."[139]

When considering the Florida citrus industry, care must be taken to differentiate between the various constituencies since the needs and interests of the growers, the processors, who extract and blend the juice, and the reconstituters, who blend and water the concentrate and package the juice for retail sale, often differ considerably. Many times these roles are combined; for example, companies like American Agronomics Corporation, based in Tampa, grow and process their own fruit, avoiding the middleman.[140] When Florida orange products are in short supply, as they were during the early to mid 1980's, or prices are high, processors and reconstituters look elsewhere — largely to Brazil — for lower priced oranges and concentrate.[141] Lower priced

136. *See supra* notes 17-35, and accompanying text.

137. A recent Florida Citrus Commission news release states: "Florida citrus is juicier and sweeter than citrus grown in other regions because of Florida's warm climate, soil conditions and plentiful rainfall." FLORIDA DEPARTMENT OF CITRUS, NEWS RELEASE (Mar., 1988).

138. *Compare* a 1968 report to the Florida Citrus Commission: "Foreign imports [of frozen concentrated orange juice] have not adversely affected the Florida citrus economy" with Citrus Commission Chairman Danforth K. Richardson's comments in 1976: "I think growers should be aware of [the threat of Brazilian fruit] and give it some thought." FIRST FIFTY YEARS, *supra* note 12, at 185, 280.

139. MCKOWN TESTIMONY, *supra* note 16, at 7.

140. Louis, *Squeezing Gold Out of Oranges*, FORTUNE, Jan. 26, 1981, at 78.

141. Berman, *Orange Crush*, FORBES, Jan. 13, 1986, at 49.

Brazilian imports can hurt those who grow oranges or extract juice; but for those who blend juice for retail sale, and for United States' consumers, the cheaper imports are financially beneficial.[142] This relationship between Florida processors and Brazilian exporters was one factor that made it impossible for Vice Chairperson of the United States International Trade Commission, Anne Brunsdale, who dissented in the issuance of an anti-dumping order against Brazil in 1987, to find that the industry as a whole had been materially injured or threatened with material injury by reason of Brazilian exports of frozen concentrate.[143] Not surprisingly, responses to questionnaires sent out by the United States International Trade Commission regarding support for the anti-dumping petition showed greater support from growers than from extractor-processors.[144] This love-hate relationship between the various components of the Florida citrus industry and Brazilian exporters complicates the issue of industry protection and control. The goal has not been to stop imports completely, but to regulate their flow so that they are available only when needed as supplements to the Florida supply.[145]

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142. Executive Vice President of Florida Citrus Mutual, Bobby McKown, stated:

> We do not ignore the benefits to U.S. consumers of the availability of the Brazilian supplies. Freeze-induced U.S. shortfalls can be met by Brazilian bulk exports, which are sold both directly to U.S. reconstituters for production of retail orange juice products, or to U.S. processors for blending with Florida concentrated juice. However, the influx of this large and readily available supply of Brazilian bulk juice, at prices much lower than those which normally prevail during times of freeze induced shortages, has drastically reduced returns to growers.

MCKOWN TESTIMONY, *supra* note 16, at 3.

143. TRADE COMMISSION, *supra* note 11, at 77-78. Chairperson Brunsdale stated:

> There is substantial evidence that the overall health of the broader domestic orange juice business is highly dependent on imported Brazilian frozen concentrated orange juice, the dumped product under investigation. As a consequence, many (if not all) of the largest producers of juice derived from U.S.-grown oranges import significant amounts of Brazilian orange juice."

Id. at 77.

144. *Id.* at R-21, R-26. *Compare* Table 4 at R-21 (growers' positions regarding the petition) with Table 8 at R-26 (extractor-processors' positions).

145. In his 1982 testimony before the International Trade Court investigating Brazilian subsidies of orange juice concentrate, Dan L. Gunter, Executive Director of the Florida Department of Citrus Department Staff, stated: "The U.S. and Florida import record clearly indicates that FCOJ imports have been used to supply the domestic market with no real increases in consumer price. The Florida industry is not attempting to stop FCOJ imports into the U.S." Statement of Dan L. Gunter, Hearing in Connection with ITC Investigation of Frozen Concentrated Orange Juice from Brazil [Investigation No. 701TA-184 (Final)] (June 17, 1983).

A. *Federal and State Protective and Regulatory Devices*

The federal government and the state of Florida have a wide array of mechanisms that have been used with varying degrees of success to fend off unwelcome imports of concentrate. The United States imposes a tariff on imported frozen concentrated orange juice of thirty-five cents per gallon (approximately thirty-four cents per pound solid) for all countries receiving the most-favored-nation rates, including Mexico and Brazil.[146] As discussed previously, beneficiaries of the Caribbean Basin Economic Recovery Act can export certain goods, including citrus products, duty free.[147] On top of the thirty-five cent tariff, Florida exacts a three cents per pound advertising tax on imports.[148] This so-called "Florida equalization tax" leads many Brazilian exporters to simply by-pass Florida and its tax by shipping to northern United States ports, thereby taking advantage of lower transportation costs to northern and mid-western states.[149]

Concentrate that is prepared through reconstituting, blending or packaging in the United States must meet Federal Food and Drug Administration Standards of Indemnity, and on January 1, 1986, the United States Customs Service began requiring foreign origin labels on all frozen and concentrated orange juice sold in the United States.[150] Florida's standards are even more rigorous than those of the Food and Drug Administration, with the Florida Citrus Code requiring minimum maturity,[151] color[152] and taste[153] standards that the FDA does not. Florida's Produce Labeling Act of 1979[154] requires that "any fresh fruit or vegetable" produced outside of the United States for sale in Florida be individually and indelibly stamped with the place of origin. Similarly, Florida Statute section 601.98 of the Florida Citrus Code makes it unlawful to misrepresent foreign imported citrus or citrus products as Florida grown and processed.

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146. Tariff Schedules of the United States, item 165.29, column 1.

147. *See supra* notes 111-112, and accompanying text.

148. FLA. STAT. § 601.155 (1987).

149. UNITED STATES DEPARTMENT OF AGRICULTURE, FRUIT SITUATION AND OUTLOOK YEARBOOK 54 (July, 1987). *See also* FLORIDA DEPARTMENT OF CITRUS, REPORT NO. 88-4 (Mar. 22, 1988) (showing the increase in use of northern ports for United States' imports of frozen concentrated orange juice between 1986 and 1987).

150. *Labeling Origin of Orange Juice*, N.Y. Times, Sept. 9, 1985, at D2, col. 3.

151. *E.g.*, FLA. STAT. § 601.16 (1987).

152. *Id.* § 601.26.

153. *Id.* § 601.9909(5).

154. *Id.* § 504.011-.014.

Two recent state programs aimed at promoting Florida juice are the Florida Seal of Approval and the Florida Sunshine Tree.[155] The Seal of Approval may only be displayed on packaged orange juice that meets established Florida standards; the Florida Sunshine Tree goes one step further, identifying 100 percent Florida grown and processed orange and grapefruit juice. To display either symbol, products must be tested periodically and licensed by the Florida Department of Citrus. In the *1986-87 Annual Report of the Florida Citrus Commission*, the Commission announced that the Seal of Approval was carried by 82 percent of all retail orange juice sales as of May, 1987, and that there was a 130 percent increase in licenses issued under the Florida Sunshine Tree program.[156]

In an early move to increase exports by developing citrus markets in Europe through advertising and other promotional means, the Florida Department of Citrus initiated the European Three-Party Program in 1966.[157] Today, when competition for overseas markets is keen, and Brazilian exported citrus products to Europe were up 76.9 percent in 1987,[158] this program has become potentially more important than it was twenty years ago. Shipments of citrus products to the twelve participating countries[159] and promotional activites are supported by the Florida Department of Citrus, the Foreign Agricultural Service and individual distributors.[160] The Department of Citrus reported the success of this program despite a shipment decline in the early 1980's due to freezes and Brazilian competition.

B. *United States Trade Law*

Increasingly, import relief from what citrus growers have termed unfair trading practices has been sought through the United States International Trade Commission under trade remedy law.[161] In 1983,

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155. FLORIDA DEPARTMENT OF CITRUS, THE FLORIDA CITRUS COMMISSION (Department of Citrus pamphlet).

156. FLORIDA DEPARTMENT OF CITRUS, 1986-87 ANNUAL REPORT OF THE FLORIDA CITRUS COMMISSION 4, 9 (1987).

157. FLORIDA DEPARTMENT OF CITRUS, FLORIDA DEPARTMENT OF CITRUS EUROPEAN THREE-PARTY PROGRAM EVALUATION (Mar. 18, 1981).

158. FLORIDA DEPARTMENT OF CITRUS, OUTLOOK UPDATE, 1986-1987 SEASON 4 (Apr. 22, 1987).

159. The 12 countries include Austria, Belgium, Finland, France, Germany, Iceland, Italy, Netherlands, Norway, Sweden, Switzerland and the United Kingdom. FLORIDA DEPARTMENT OF CITRUS, EUROPEAN THREE-PARTY PROGRAM 1 (Nov., 1984).

160. *Id.*

161. The five main United States' unfair trade and relief actions that are available include:

1. Subtitle B of Title VII of the Tariff Act of 1930 (added by the Trade Agreements Act of 1979), 19 U.S.C. § 1673 (1976) ("anti-dumping" actions).

Florida Citrus Mutual succeeded in a countervailing duty action against Brazil when the International Trade Commission determined pursuant to section 751(b) of the Tariff Act of 1930 that subsidies being paid by the Brazilian government to growers, producers and exporters of frozen concentrated orange juice were threatening the United States citrus industry with a material injury.[162] Programs found to confer subsidies included preferential financing and income tax exemption for export earnings.[163] On February 24, 1983, Brazil signed a suspension agreement with the United States Department of Commerce, the terms of which required Brazil to offset the amount of the net subsidy by an export tax. The International Trade Commission suspended its investigation after the agreement was signed, but in 1984 the investigation was reopened at the request of three Brazilian producers and exporters of frozen concentrated orange juice. The petitioners wanted a review of the 1983 determination in light of changed circumstances, and a modification or revocation of the suspension agreement. In its final determination in December of 1984, the International Trade Commission determined that the suspension agreement must remain unaltered to prevent an industry in the United States from being threatened with material injury.[164]

In May of 1986, Florida Citrus Mutual once again moved against Brazilian exporters by filing an anti-dumping action pursuant to section 735(b) of the Tariff Act of 1930 alleging that imports of frozen concentrated orange juice were being sold in the United States at less than fair value, thereby materially injuring or threatening with a material injury a United States industry.[165] In October of 1986, the Department of Commerce determined dumping margins on the imports to be 8.54 percent, but by March of 1987, the Department had lowered its esti-

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2. Subtitle A of Title VII of the Tariff Act of 1930 (added by the Trade Agreement Act of 1979), 19 U.S.C. § 2251(b) (1976). Section 303 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1303 (1976). Section 751(b) of the Tariff Act of 1930, 19 U.S.C. § 1675 (1976) ("countervailing duty" actions).

3. Section 201(b) of the Trade Act of 1974, 19 U.S.C. § 2251(b) (1976). Section 406(a) of the Trade Act of 1974, 19 U.S.C. § 2436(a) (1976) ("escape clause" actions).

4. Section 337 of the Tariff Act of 1930 (amended by the Trade Act of 1974), 19 U.S.C. § 1337 (1976) ("Unfair Methods of Competition in Import Trade").

5. Section 301 of the Trade Act of 1974 (amended by the Trade Act of 1979), 19 U.S.C. § 2411 (1976) ("Presidential Action Against Unjustifiable Foreign Trade Practice" actions).

162. TRADE COMMISSION, *supra* note 11, at R-2.

163. 48 Fed. Reg. 25,245 (June 6, 1983).

164. TRADE COMMISSION, *supra* note 11, at R-2.

165. *Id.* at R-1.

mate substantially to 1.96 percent.[166] In April, the International Trade Commission finalized the 1.96 percent duty, a figure so low that President of the Brazilian Sao Paulo Citrus Growers Association, Oswaldo Veloci, stated "[i]t will have virtually no impact."[167]

In an attempt to end unfair trade practices preventing access to Japanese markets, Florida Citrus Mutual, the Florida Citrus Packers, the Florida Citrus Processors Association, the Florida Department of Citrus, and the Indian River Citrus League filed a petition in May of 1988 under section 301 of the Trade Act of 1974 against Japanese import restrictions on United States orange products.[168] A section 301 proceeding gives the President complete discretion in taking action to enforce the rights of the United States under trade agreements or to work towards eliminating the alleged unfair practices. Japanese citrus import quota practices were the subject of unsuccessful talks between United States and Japanese officials for months before the petition was filed. Acceptance of the petition has been granted, and the President must determine what action, if any, will be taken.

C. *Caribbean Basin Initiative Relief*

Under section 213(f) of the Caribbean Basin Economic Recovery Act, fast-track relief for "perishable products" is provided for those filing a petition with the International Trade Commission pursuant to section 201 of the Trade Act of 1974. "Perishable products" include fresh fruit[169] and concentrated citrus fruit juice.[170] To obtain emergency relief, the International Trade Commission must determine within fourteen days of the filing of the petition that increased imports have resulted in serious injury or a threat of serious injury, and must recommend import relief to the President.[171] Within seven days after receiving the recommendation, the President either issues a proclamation withdrawing the duty-free treatment afforded by the Act, or publishes a notice of his determination not to take emergency action.[172] In this way, duty-free treatment can be eliminated, and most-favored-nation status restored, within twenty-one days.

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166. *U.S. Cuts Price on Unfair Pricing of Brazilian Juice*, Wall St. J., Mar. 11, 1987, at A50, col. 1.

167. Whitefield, *supra* note 52. *See also* Bruce, *Brazilians Cheer U.S. Citrus Ruling*, *J. Com.*, Mar. 12, 1987, at 3A, col. 5.

168. *USTR Yeutter Accepts Florida Citrus Industry Section 301 Petition Against Japanese Quotas*, 5 INT'L TRADE REP. 788 (June 1, 1988).

169. CBI, *supra* note 109, § 213(f)(5)(D).

170. *Id.* § 213(f)(5)(F).

171. Section 201 of the Trade Act of 1974, 19 U.S.C. § 2251 (1976).

172. CBI, *supra* note 109, § 213(f)(3).

VII. CONCLUSION

Federal and state regulation of the Florida citrus industry to protect United States consumers and the industry itself has been evident throughout the industry's history. Foreign imports of frozen concentrated orange juice have become an increasing threat since Brazil entered the market in 1962. Recent freezes and canker disease in Florida led to widespread financial difficulties in the citrus industry, allowing Brazilian exporters to penetrate United States and European markets to a substantial degree.

The unique nature of the industry, consisting of growers who are hurt in the short term by the imported concentrate and processors who seek out the lower-priced foreign concentrate when Florida supplies are difficult to procure or priced out of reach, has complicated the issue of industry protection and control. Protection against the influx of unwanted imports, imports that are not merely supplementary to the Florida supply but tend to supplant it, has come in many forms: federal tariffs, the Florida "equalization tax," Florida programs created to promote the consumption of Florida-grown or Florida-processed juice, federal and state labeling requirements, and relief under United States trade law. As orange supplies increase, both Brazil and Florida will continue to reach out to new markets for the lucrative profits that flow from the consumption of citrus juice.

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