

## EXPLANATION OF COMMISSION DETERMINATIONS ON ADEQUACY

in

*Frozen Concentrated Orange Juice from Brazil*, Inv. No. 731-TA-326 (Review)

On March 5, 1999, the Commission determined that it should proceed to an expedited review in the subject five-year review pursuant to section 751(c)(3)(B) of the Act, 19 U.S.C. § 1675(c)(3)(B).<sup>1</sup> The Commission determined that the domestic interested party group response was adequate.<sup>2</sup> In this regard, the Commission received a joint response from Florida Citrus Mutual, a trade association representing 11,000 growers, and six producers of frozen concentrated orange juice for manufacturing.<sup>3</sup> The joint response included company specific data from companies accounting for a substantial percentage of the domestic production of frozen concentrated orange juice for manufacturing and of round oranges.

Each domestic interested party that responded to the notice stated its willingness to participate in the review and provide information requested by the Commission. The Commission found that these statements meet the statutory requirement that interested parties demonstrate a willingness to participate in the review. We note that Florida Citrus Mutual, like all trade associations, represents and speaks on behalf of its members and that such a form of

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<sup>1</sup>Chairman Bragg is not participating in this review.

<sup>2</sup>Commissioner Crawford dissenting.

<sup>3</sup>Commissioner Crawford determined that the joint domestic interested party response was filed as a coalition pursuant to section 771(9)(G)(iii) of the Act, 19 U.S.C. § 1677(9)(G)(iii). The coalition consists of one large trade association of orange growers and six processors of frozen concentrated orange juice for manufacturing. She determined that the coalition response was adequate as an individual response. Commissioner Crawford does not join the remainder of the majority discussion regarding the domestic interested party group response. *See infra*.

representation is not uncommon in our experience, especially in a highly fragmented industry, as is the case here.

Because the Commission did not receive a response from any respondent interested party, the Commission determined that the respondent interested party group response was inadequate. The Commission did not find any circumstances that would warrant a full review. The Commission therefore determined to conduct an expedited review.

Commissioner Crawford dissents from her colleagues in their determination regarding domestic interested party group adequacy. With respect to such determination, Commissioner Crawford has identified two problems with the form of response in this case. First, as she has previously stated, Commissioner Crawford believes that a trade association responding on behalf of its members, in lieu of the members responding directly, must provide the Commission with some statement that allows the Commission to make a statutory determination regarding the willingness among interested parties to participate in a review and to provide information requested throughout the proceeding. In this particular review, the trade association purporting to represent domestic growers provided no such statement or other proxy to satisfy the statutory criterion regarding their willingness to participate and to provide information requested throughout the proceeding. The general statement provided in the response that trade association members will participate in this review by providing requested information “to the fullest extent possible” does not satisfy the statutory intent underlying the Commission’s adequacy determinations.

Second, the trade association itself did not file a response to the notice of institution in this review. Rather, the only response was filed by a coalition on behalf of domestic interested parties. The trade association is only one member of that coalition. Therefore individual growers

were not directly represented in the response, and grower representation was even more attenuated than if the trade association had filed directly on their behalf. Thus, the Commission is *twice* removed from the growers, and there is no statement or other discussion regarding member intent from the growers themselves. Such circumstances further reduce the ability of the Commission to make the necessary assessment of a willingness and intent to participate.

Without an effective means to assess grower willingness and intent to participate in this review, and given the small percentage of processors joining in the coalition response to the notice of institution, Commissioner Crawford determined that the domestic interested party group response was inadequate. She therefore determined to conduct an expedited review based upon both domestic and respondent party group inadequacy.